

EXHIBIT 21

Hearing

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PHILLIPS, L.G., LCD CO., LTD,)
)
Plaintiffs,) C.A. No. 04-343(JJF)
)
v.)
)
TATUNG CO., TATUNG COMPANY OF)
AMERICA, INC., and VIEWSONIC)
CORPORATION,)
)
Defendants.)

Hearing of above matter taken pursuant to
notice before Renee A. Meyers, Registered Professional
Reporter and Notary Public, in the law offices of BLANK
ROME, LLP, 1201 North Market Street, Wilmington,
Delaware, on Thursday, December 28, 2006, beginning at
approximately 11:30 p.m., there being present:

BEFORE: VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

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| <p>1 APPEARANCES (Continued): 2 MCKENNA, LONG & ALDRIDGE, LLP 3 CASS W. CHRISTENSON, ESQ. 4 REL S. AMBROZY, ESQ. 5 JESSE KOKRDA, ESQ. 6 CORMAC CONNOR, ESQ. 7 1900 K Street, N.W. 8 Washington, D.C. 20006 9 for Plaintiffs</p> <p>10 RICHARDS LAYTON & FINGER 11 FREDERICK L. COTTRELL, III 12 One Rodney Square 13 Wilmington, Delaware 19801 14 for Defendant Tatung Co.</p> <p>15 GREENBERG TRAURIG LLP 16 FRANK MERIDETH, ESQ. 17 2450 Colorado Avenue, Suite 400E 18 Santa Monica, California 90404 19 for Defendant Tatung Company of America, Inc.</p> <p>20 CONNOLLY BOVE LODGE & HUTZ LLP 21 JEFFREY B. BOVE, ESQ. 22 JACQUELINE MASON, ESQ. 23 1007 North Orange Street 24 Wilmington, Delaware 19899 for Defendant Viewsonic Corporation</p> <p>BINGHAM MCCUTCHEN LLP SCOTT R. MILLER, ESQ. 355 South Grand Avenue Los Angeles, California 90071-3106 for Defendant Viewsonic Corporation</p> | <p>1 approximately two hours so that we can take a break and 2 make sure that anyone who needs to refresh themselves can 3 do that. And that break, I would expect a half hour, 4 unless someone suggests that we are going to need more 5 time than a half hour. So I would be looking to break 6 around 1:30.</p> <p>7 Does anyone have any problem with that? 8 MR. BOVE: Jeff Bove for Viewsonic. 9 That's fine, your Honor.</p> <p>10 MR. COTTRELL: Fred Cottrell. I have 11 another call at 2:00, which won't go very long, so I can 12 just jump back in, hopefully, only a few minutes after 13 our break.</p> <p>14 SPECIAL MASTER POPPITI: Thank you. 15 That's fine.</p> <p>16 MR. BOVE: Jeff Bove. Also, since I 17 have Jacqueline Mason with me, with the Court's 18 permission, once we got started, I was going to request 19 your Honor's permission to be excused. I am next door 20 and am available, but I will not be arguing today. Scott 21 Miller will be.</p> <p>22 SPECIAL MASTER POPPITI: I have no 23 problem with that at all. 24 MR. BOVE: Your Honor, one --</p> |
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| <p>1 MR. BOVE: Your Honor, this is Jeff Bove 2 from Connolly Bove representing Viewsonic, along with 3 Jacqueline Mason and my partner Scott Miller from 4 Los Angeles.</p> <p>5 MR. COTTRELL: And, your Honor, Fred 6 Cottrell at Richards Layton in Wilmington for Tatung, and 7 on the phone from Greenberg Traurig, Frank Merideth.</p> <p>8 SPECIAL MASTER POPPITI: Next, please. 9 MR. KIRK: Dick Kirk from The Bayard 10 Firm here in Wilmington for the plaintiff LG Phillips LCD 11 Company, Ltd., and with me on the line from Washington, 12 and perhaps elsewhere, from McKenna Long & Aldridge are 13 Cass Christenson, Rel, R-e-l, Ambrozy, Derek Auito, and 14 Jesse Kokrda, K-o-k-r-d-a, and Cormac Connor, 15 C-o-r-m-a-c.</p> <p>16 SPECIAL MASTER POPPITI: Thank you, 17 Mr. Kirk.</p> <p>18 Then thank you, counsel, and good 19 morning as we come up shortly to noon.</p> <p>20 Let's do some housekeeping first, if you 21 will, with respect to today's proceeding.</p> <p>22 I would propose that, for purposes of 23 making sense of what I expect is going to be a fairly 24 healthy workday with you all, that we go for a period of</p> | <p>1 SPECIAL MASTER POPPITI: Please identify 2 yourselves each time.</p> <p>3 MR. BOVE: Jeff Bove again.</p> <p>4 SPECIAL MASTER POPPITI: Thank you, 5 Mr. Bove.</p> <p>6 MR. BOVE: One other point of 7 housekeeping, and I am sure everyone will want to weigh 8 in on this, particularly your Honor, which is the manner 9 in which the Court would propose to tackle these motions 10 today.</p> <p>11 Obviously, from Viewsonic's standpoint, 12 we have been thinking about it, and would toss the 13 proposal out for your Honor's consideration, obviously 14 for comment by all on the phone, which is to go, frankly, 15 motion by motion, request by request.</p> <p>16 As I understand, the Court does have 17 rather extensive written submissions of the parties, and 18 we were thinking, again, obviously, subject to your 19 Honor's views, that perhaps some reasonable closure on 20 oral argument, per discovery requests, might be 21 appropriate in order to give hope of completing the task 22 today.</p> <p>23 I simply offer that as a suggestion, 24 and, obviously, defer completely to your Honor's view.</p> |

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| <p>1 Mr. Christenson.</p> <p>2 MR. CHRISTENSON: Your Honor, it's</p> <p>3 correct to say that they have not alleged it, I don't</p> <p>4 believe, as an affirmative defense, and the time to --</p> <p>5 things have expired under the scheduling order.</p> <p>6 SPECIAL MASTER POPPITI: I understand</p> <p>7 that.</p> <p>8 MR. CHRISTENSON: And I guess, you know,</p> <p>9 from our standpoint, we had expected to obtain prompt</p> <p>10 discovery to the extent this was an issue in the case,</p> <p>11 but to the extent it's not an issue in the case, then I</p> <p>12 think the appropriate way to approach it would be to, if</p> <p>13 and when there is any attempt to bring it into the case</p> <p>14 in the future, given where we are and given our upcoming</p> <p>15 deposition schedule, etcetera, we would, obviously,</p> <p>16 oppose it based, in part, on the pressures resulting from</p> <p>17 where we are in the case.</p> <p>18 SPECIAL MASTER POPPITI: Well, there is</p> <p>19 no question that I have the authority to draw the</p> <p>20 parameter around what is appropriate discovery going</p> <p>21 forward. And given the state of this record, without</p> <p>22 making a determination on this issue, it seems to me it</p> <p>23 would be an uphill climb for Viewsonic to -- for there to</p> <p>24 be any discovery on this issue if it's not properly pled.</p> | <p>1 have been pled.</p> <p>2 MR. MILLER: Thank you, Your Honor.</p> <p>3 SPECIAL MASTER POPPITI: Thank you, sir.</p> <p>4 Let me just get some papers out of my way. Thank you.</p> <p>5 Next. I promised the court reporter we'd be out of here</p> <p>6 by midnight and she was very skeptical until we just</p> <p>7 dealt with that last issue.</p> <p>8 MR. CHRISTENSON: I am glad we are</p> <p>9 making progress.</p> <p>10 MR. MILLER: That's a joke, too, Your</p> <p>11 Honor.</p> <p>12 SPECIAL MASTER POPPITI: That's a joke</p> <p>13 as well, yes. Thank you.</p> <p>14 MR. MILLER: Your Honor, I think --</p> <p>15 SPECIAL MASTER POPPITI: Yes,</p> <p>16 Mr. Miller.</p> <p>17 MR. MILLER: The next chronological</p> <p>18 motions would be those filed by Viewsonic, I believe.</p> <p>19 SPECIAL MASTER POPPITI: That is</p> <p>20 correct. The next motion would be Viewsonic's Motion to</p> <p>21 Compel LG, Re: Components, etcetera. It's dated 10/3,</p> <p>22 2006, and the response was 10/25, 2006.</p> <p>23 MR. MILLER: Let me -- we have been</p> <p>24 discussing a lot of the requests kind of in categories</p> |
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| <p>1 I am looking at the scheduling order,</p> <p>2 Mr. Christenson. Let me -- and I know it's been</p> <p>3 modified. Let me just look here.</p> <p>4 What paragraph are you referring to with</p> <p>5 respect to amending the pleadings?</p> <p>6 MR. CHRISTENSON: I apologize, Your</p> <p>7 Honor. I do not have that at my fingertips, but it was</p> <p>8 in the -- the date is in the original --</p> <p>9 SPECIAL MASTER POPPITI: It's in the</p> <p>10 original?</p> <p>11 MR. CHRISTENSON: Yes, sir.</p> <p>12 MR. MILLER: It's in paragraph seven,</p> <p>13 Your Honor.</p> <p>14 SPECIAL MASTER POPPITI: I am getting</p> <p>15 there. I see it. Thank you, Mr. Miller.</p> <p>16 Yeah, it says, "All motions to amend the</p> <p>17 pleadings shall be filed on or before January 17th,</p> <p>18 2006." We are coming up to an anniversary.</p> <p>19 I mean, I -- this matter is not ripe for</p> <p>20 consideration because the -- the pleadings do not join</p> <p>21 the issue, and if it needs to be raised with Judge</p> <p>22 Farnan, my sense is you better do it -- you better do it</p> <p>23 quickly. But my ruling will be that it is not ripe for</p> <p>24 consideration given the parameters of the issues that</p> | <p>1 and I will do the same here to see if we can at least</p> <p>2 focus the issues.</p> <p>3 These first set of requests deal with</p> <p>4 mounting methods and structures that are -- that</p> <p>5 Viewsonic seeks to discover vis-a-vis LPL.</p> <p>6 SPECIAL MASTER POPPITI: Mr. Miller,</p> <p>7 before you -- before you launch here, let me just remind</p> <p>8 myself of something that I made a note on. Just one</p> <p>9 moment, please. Just give me one -- give me the courtesy</p> <p>10 of putting you on hold again. I have got to find the</p> <p>11 document. I made the note but I can't find the document.</p> <p>12 Hold one sec.</p> <p>13 (Off the record.)</p> <p>14 SPECIAL MASTER POPPITI: Counsel, I am</p> <p>15 not having the kind of success that I should have, but I</p> <p>16 do recall it was either correspondence or it was in the</p> <p>17 submittal that Miss Mason filed. My note reads, to</p> <p>18 myself, at page 10, I had some impression that LPL was --</p> <p>19 well, that would make sense -- was willing to produce the</p> <p>20 documents. So wait a minute. I am looking -- I am</p> <p>21 looking at the wrong document. Hold one sec. Actually,</p> <p>22 this is Mr. Kirk's, but it was in response to</p> <p>23 Ms. Mason's.</p> <p>24 If, counsel, you will look at Plaintiff</p> |

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| <p>1 LG Phillips' response, page 10, footnote eight.</p> <p>2 MR. MILLER: Yes, Your Honor.</p> <p>3 SPECIAL MASTER POPPITI: I mean, does</p> <p>4 that not cover the ball park?</p> <p>5 MR. CHRISTENSON: Would you like to hear</p> <p>6 first from Mr. Miller?</p> <p>7 SPECIAL MASTER POPPITI: Sure.</p> <p>8 MR. MILLER: Your Honor, when you say</p> <p>9 "LPL's response," you are talking about their opposition</p> <p>10 to the motion?</p> <p>11 SPECIAL MASTER POPPITI: Yeah. I am</p> <p>12 looking at their opposition to the motion and what --</p> <p>13 what I found interesting was the footnote seemed to</p> <p>14 suggest to me that LPL -- I will read it, "LPL has</p> <p>15 already produced documents responsive to categories one</p> <p>16 and two, which include LPL invention disclosure documents</p> <p>17 and internal files pertaining to the patents in suit.</p> <p>18 LPL is willing to produce documents concerning the</p> <p>19 remaining three categories," and I see the qualifier, "to</p> <p>20 the extent responsive non-privileged documents exist."</p> <p>21 And my note was: Doesn't that say that</p> <p>22 -- is it moot? Do I need to hear what the agreement is?</p> <p>23 MR. MILLER: If you are referring to an</p> <p>24 agreement to limit the response, there was no agreement.</p> | <p>1 from LPL that relates to the development and</p> <p>2 investigation of these mounting technologies and the</p> <p>3 limitations on these mounting technologies, whether they</p> <p>4 be front mounted or side mounted technologies, because,</p> <p>5 obviously, they are going to be applicable to the</p> <p>6 limitations on rear mounting, and they will go directly</p> <p>7 to the issues, for example, if the patent is construed in</p> <p>8 a manner that you can put a fastening element anywhere on</p> <p>9 the back, is that claim enabled because if there are</p> <p>10 limitations in terms of -- that have to be made to the</p> <p>11 LCD panel in order to mount it that way, they certainly</p> <p>12 really not disclosed in the patent.</p> <p>13 It will go to the issues of</p> <p>14 inventorship, the side mount patents, where the side</p> <p>15 mounting, or the technology that was developed both by</p> <p>16 IBM and also by LPL in conjunction with dec. and was the</p> <p>17 subject of a lawsuit here in California, the Court here</p> <p>18 recently determined that LPL did not have standing to</p> <p>19 assert those patents because it wasn't the proper owner</p> <p>20 of those patents, having not been the proper inventor of</p> <p>21 those patents.</p> <p>22 SPECIAL MASTER POPPITI: Mr. Miller, I</p> <p>23 understand your argument, and, even before hearing from</p> <p>24 Mr. Christenson, understand the strength of it.</p> |
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| <p>1 We discussed, in the meet and confer, that if they would</p> <p>2 produce these kinds of materials, we would look at them</p> <p>3 and then determine what else we needed.</p> <p>4 SPECIAL MASTER POPPITI: Okay.</p> <p>5 MR. MILLER: Those materials were not</p> <p>6 produced, and, just to be clear, the materials that we</p> <p>7 are seeking are materials that relate to the, what they</p> <p>8 already admit is prior art. As I was starting to say</p> <p>9 before, this case, as we know, deals with what's called</p> <p>10 rear mounting --</p> <p>11 SPECIAL MASTER POPPITI: Right.</p> <p>12 MR. MILLER: -- mounting these devices</p> <p>13 from the back. There are two admitted types of prior</p> <p>14 art, one is side mounting and one is front mounting.</p> <p>15 We are confident that, contrary to what</p> <p>16 LPL tells Judge Farnan its claim construction brief, that</p> <p>17 it's not possible to merely slap a threaded insert on the</p> <p>18 back of one of these LCD devices anywhere, and that LPL</p> <p>19 knows, from its experience in developing side mounting</p> <p>20 and front mounting panels, and has warned its customers</p> <p>21 in conjunction with those panels to only use the specific</p> <p>22 mounting structures that are provided because these</p> <p>23 devices are fragile.</p> <p>24 So what we are seeking is information</p> | <p>1 I guess my question is the recitation of</p> <p>2 what is stated on page 10 of their response, are you</p> <p>3 suggesting it's not accurate? For example, I am looking</p> <p>4 at page 10, in the body of the submittal, and it says, at</p> <p>5 the -- in the first full sentence, "Viewsonic's counsel</p> <p>6 identified five such categories." Then it threw me into</p> <p>7 the footnote which recited five categories, I expect, and</p> <p>8 there is a quote, so I expect that they are the</p> <p>9 categories that you may have identified, and then I</p> <p>10 understood LPL to say that they were going to produce.</p> <p>11 MR. MILLER: And to the extent that the</p> <p>12 argument by LPL is that that was an agreement to take</p> <p>13 those documents and nothing further, that was not an</p> <p>14 agreement ever reached.</p> <p>15 SPECIAL MASTER POPPITI: Okay.</p> <p>16 MR. MILLER: Part of the meet and</p> <p>17 confer, we indicated that if they would produce documents</p> <p>18 -- if they could produce documents in stages and that</p> <p>19 these would be the things that we would be the most</p> <p>20 interested in, and if they would produce those first, we</p> <p>21 are happy to get those and then discuss with them what</p> <p>22 other documents need to be produced.</p> <p>23 SPECIAL MASTER POPPITI: Have you gotten</p> <p>24 that production yet?</p> |

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| <p>1 MR. MILLER: No.</p> <p>2 SPECIAL MASTER POPPITI: Would it be --</p> <p>3 and I ask this of both counsel, not that I want to avoid,</p> <p>4 because I won't avoid making a decision, it is, however,</p> <p>5 more important for me if I understand that there is an</p> <p>6 agreement, and that's rather obvious, if there is an</p> <p>7 agreement, you do it right away, you don't have to wait</p> <p>8 for a written document from me, you then don't have to</p> <p>9 wait for some judgment on the part of Judge Farnan after</p> <p>10 one or the both of you file up exceptions.</p> <p>11 So, my question is this: If you agree</p> <p>12 that the five categories are categories that should be</p> <p>13 produced right away, whatever that means, and if there is</p> <p>14 agreement that Viewsonic has the opportunity to evaluate</p> <p>15 that production, then go back to the meet and confer</p> <p>16 table for purposes of saying, We need three more</p> <p>17 categories or we need so many more documents in each of</p> <p>18 the categories, isn't that the better way to approach</p> <p>19 this?</p> <p>20 MR. MILLER: Your Honor, I guess,</p> <p>21 conceptually, I would say yes. One of the problems is</p> <p>22 the recitation here of this interchange is not accurate.</p> <p>23 It was not ever intended that categories one and two</p> <p>24 would relate to the invention disclosure documents or</p> | <p>1 And, so, we need to be able to get</p> <p>2 complete discovery from them with regard to these</p> <p>3 mounting technologies that they acknowledge are out there</p> <p>4 and that they have long since used, some of which they</p> <p>5 claim to have developed themselves, so that we can really</p> <p>6 put these patents and the supposed invention of these</p> <p>7 patents into the proper perspective.</p> <p>8 And, so, we can't -- you know, that's</p> <p>9 where I am today.</p> <p>10 SPECIAL MASTER POPPITI: I mean, if you</p> <p>11 can't forge an agreement that makes sense, then I am</p> <p>12 certainly not going to waste everyone's time seeing if</p> <p>13 that can occur.</p> <p>14 MR. CHRISTENSON: Your Honor, I feel</p> <p>15 that your suggestion would be very productive because it</p> <p>16 would allow us to focus on a fixed target and understand</p> <p>17 and deal with things in a specific and concrete way.</p> <p>18 And I -- I certainly dispute</p> <p>19 Mr. Miller's statements that we haven't produced</p> <p>20 documents. We have produced, for example, all of LPL's</p> <p>21 documents concerning the patents in suit and concerning</p> <p>22 the inventions that are the subject of this case that</p> <p>23 relate to rear mounting of products.</p> <p>24 We have produced internal patent files</p> |
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| <p>1 technical development documents of the patents in suit</p> <p>2 but were directed to what the requester directed to,</p> <p>3 which is side mounting and/or front mounting technologies</p> <p>4 that they have employed.</p> <p>5 They have not produced any of that. In</p> <p>6 fact, they have taken the position that side mounting and</p> <p>7 front mounting either require claim construction or are</p> <p>8 not relevant to this case.</p> <p>9 And it's notable, in my mind, that those</p> <p>10 technologies are the subject of the discovery in the</p> <p>11 California case that now, you know, as of ten days ago,</p> <p>12 LPL has decided they want to bring over wholesale after</p> <p>13 stiff arming us for months about those materials.</p> <p>14 So they haven't even produced the</p> <p>15 documents under categories one and two for the related</p> <p>16 technologies, and their footnote indicates they are</p> <p>17 producing it only for the patents in suit.</p> <p>18 There is another sort of catch 22 here</p> <p>19 that you need to understand that LPL is trying to set up.</p> <p>20 They have taken the position that they don't produce</p> <p>21 products that employ the technology of the patents in</p> <p>22 suit, and, yet, they have advised Viewsonic that</p> <p>23 Viewsonic products that use LPL modules likely infringe</p> <p>24 the patents in suit.</p> | <p>1 from LPL. We have produced documents from our own patent</p> <p>2 prosecution files. We have produced third-party</p> <p>3 documents, or documents related to third-party products.</p> <p>4 We have produced the invention disclosure forms, for</p> <p>5 example. We have done a very comprehensive, and many</p> <p>6 months ago, of production.</p> <p>7 To the extent they are seeking now to</p> <p>8 bring documents and discovery in from the side mount case</p> <p>9 and issues, which are a different set of patents in the</p> <p>10 California case, I don't understand what it is that they</p> <p>11 are seeking.</p> <p>12 They haven't explained to us why we</p> <p>13 should be bringing discovery or producing documents in</p> <p>14 this case that relate to discovery in the -- in different</p> <p>15 patents, side mount patents in the California case.</p> <p>16 So, it's difficult to respond to that</p> <p>17 specifically because it's not framed specifically, but,</p> <p>18 generally, there is just no basis for them to be trying</p> <p>19 to go outside the scope of this invention and raise</p> <p>20 issues concerning other inventions.</p> <p>21 The question here is: What is our</p> <p>22 invention and do the products that are accused of</p> <p>23 infringing infringe? Do they copy our invention? And</p> <p>24 they are seeking wholesale discovery on all of LPL's</p> |

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| <p>1 products which are -- which LPL, as Mr. Miller said, does 2 not assemble visual display products that use LPL's 3 products. LPL makes a component, a module, that goes 4 into the --</p> <p>5 SPECIAL MASTER POPPITI: I understand 6 that. Maybe what I -- I thought I understood Mr. Miller 7 to say that there is -- there will be a lot of discussion 8 about prior art. That's the first thing I understood him 9 to say; correct, Mr. Miller?</p> <p>10 MR. MILLER: Yes, Your Honor.</p> <p>11 SPECIAL MASTER POPPITI: And I also 12 understood him to say that they expect that, in prior art 13 that deals with other mounting methodologies, there is 14 language that suggests -- in the nature of warnings; 15 correct, Mr. Miller?</p> <p>16 MR. MILLER: Yes, Your Honor.</p> <p>17 SPECIAL MASTER POPPITI: And would you 18 remind me again precisely what you said about those 19 warnings?</p> <p>20 MR. MILLER: That they restrict the 21 mounting of these products solely to the mounting holes 22 and it's not possible to merely just put a mounting 23 structure anywhere in conjunction with this product that 24 they sell.</p> | <p>1 exception and you don't, or so many days, at least a 2 proposal to Judge Farnan, so many days after he has the 3 opportunity to review whatever I do if asked to.</p> <p>4 And you all know what that means. That 5 just pushes it out there in terms of -- not in terms of 6 when the Court acts. It just pushes it out there because 7 I have got to do some work on this end. You will have 8 the opportunity to do something with my work at your end. 9 And then Judge Farnan ultimately will have it on his 10 desk, and we all know that that process, I don't believe 11 we shortened the time frame in this case, have we, 12 counsel?</p> <p>13 MR. MILLER: Not as to these motions, we 14 didn't.</p> <p>15 SPECIAL MASTER POPPITI: Not as to these 16 motions. So we are out there over a month.</p> <p>17 MR. MILLER: I would hope that we would 18 do it, given that inherent time frame, that we could do 19 it within a week of either of those events transpiring.</p> <p>20 SPECIAL MASTER POPPITI: Is that 21 acceptable, one week, five business days?</p> <p>22 MR. CHRISTENSON: Could we make it two 23 weeks?</p> <p>24 MR. MILLER: I wouldn't object to two</p> |
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| <p>1 SPECIAL MASTER POPPITI: It seems to 2 me --</p> <p>3 MR. MILLER: And they take the position 4 that the patents in suit enable a mounting structure 5 anywhere on the back surface, and, yet, there is no 6 discussion about the technical aspects or requirements 7 that that necessitates.</p> <p>8 One of the issues, as Mr. Christenson's 9 comments illuminate to me, at least, is that it's 10 difficult to reach an agreement in a patent case when 11 your opponent says, I will tell you about the patents but 12 I won't tell you anything we know about the prior art, 13 and that's essentially what he is telling us.</p> <p>14 SPECIAL MASTER POPPITI: That's not 15 going to happen here. I am going to require, because you 16 can't forge an agreement, that the -- that the request -- 17 that there be production with respect to the request, and 18 what I -- understanding that this represents an order as 19 opposed to an agreement which will be ordered. It will 20 be in the nature of a finding and recommendation, which I 21 will have to make at -- in due course, and what I would 22 like from you is a suggestion as to when that production 23 occurs, understanding that it's either going to occur 24 within so many days of your having the right to take</p> | <p>1 weeks if they don't appeal, but one week if they do, I 2 guess.</p> <p>3 SPECIAL MASTER POPPITI: Is that 4 acceptable? Because you will have the time.</p> <p>5 MR. CHRISTENSON: Right. I think we 6 probably could live with that.</p> <p>7 SPECIAL MASTER POPPITI: Okay. Then it 8 will be two weeks if there is no appeal and one week 9 after Judge Farnan rules, and, of course, he maintains 10 the ultimate authority to adjust that one week. But I 11 will indicate that it will be one week by agreement, so 12 it's likely that he would -- I would anticipate he would 13 accept that.</p> <p>14 MR. MILLER: The next set of requests 15 deal with information relating to flat panel display 16 devices, not directed specifically to mounting structures 17 but to LCD products or plasma products, for example.</p> <p>18 Again, these -- these patents in suit 19 discuss how you mount a conventional component inside of 20 a housing, and what we have sought are the documents and 21 information relating to separate components of a flat 22 panel display device.</p> <p>23 The patents describe how certain of the 24 components that are used in the invention, the frames,</p> |

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| <p>1 for example, assemble these components, and, so, we are 2 seeking some information about conventional products and 3 what would be known to one of ordinary skill in the art 4 at the time of this invention that relates to these 5 devices that the invention supposedly applies to. 6 The only response we have gotten back 7 from LPL is that they will respond when we agree to 8 narrow them, without any suggestion about why they are 9 overbroad or how they should be narrowed. 10 Again, we believe that this is clearly 11 information that is relevant to a variety of issues in 12 this case and that it should be produced forthwith. 13 SPECIAL MASTER POPPITI: Why don't you 14 articulate for the record the relevance with respect to 15 the variety of issues? 16 MR. MILLER: Well, the variety of issues 17 would be, again, the issue of enablement, whether or not 18 the patents sufficiently disclose how these components go 19 together, or whether what one ordinarily skilled in the 20 art would know, the nature of whether or not the 21 difference between other prior art that we have located 22 and the disclosure and the patents would be obvious to 23 one skilled in the art based on how these components 24 interact and what they do, the, you know, the relative</p> | <p>1 MR. CHRISTENSON: For example, the issue 2 of enablement is a question that can be resolved by 3 looking at the patent and understanding whether the 4 patent sufficiently discloses aspects of the invention. 5 Whether the written description in the patent is 6 sufficient is not something that's going to be informed 7 by all the documents related to all the manufacturing 8 that LPL has done, since 1997, of modules. And the 9 claims at issue, Your Honor, don't refer to LCD modules. 10 They refer to a certain type of mounting and assembly of 11 a display device to a case, and that's not -- LPL doesn't 12 have those documents because it doesn't do that. 13 So, this is really -- these are kitchen 14 sink requests that aren't going to get anybody anywhere 15 with respect to the claims and defenses in this case. 16 SPECIAL MASTER POPPITI: I understand 17 your position with respect to enablement. Talk about the 18 prior art. 19 MR. CHRISTENSON: Again, Your Honor, the 20 prior art issue is: Was this invention obvious or was it 21 anticipated by -- it had already been invented; was it 22 already out in the public realm? And there is nothing 23 that's going to be learned from LPL's manufacturing 24 yesterday and a year ago and for the past ten years of</p> |
| Page 115 | Page 117 |
| <p>1 value of this invention, potentially, from the standpoint 2 of a reasonable royalty and how easy it is to design 3 around based on one of ordinary skill in the art of 4 knowledge of these components and how they work together 5 for mounting, which was, obviously, done prior to this 6 invention, but how they work together for mounting in 7 these kinds of products. 8 So, those would be the three that I 9 know, with a high degree of certainty, are applicable, 10 and there may be others. 11 SPECIAL MASTER POPPITI: Thank you. 12 Mr. Christenson. 13 MR. CHRISTENSON: Your Honor, the 14 requests that they have propounded would call for LPL to 15 produce all sorts of documents going back to 1997 to the 16 present for every LCD module that LG Phillips has made 17 and all the components that relate to every one of those 18 modules. It's just a remarkably overbroad set of 19 requests and it's not calculated within reason to lead to 20 discovery of admissible evidence, and it's not -- it's 21 just not relevant to the issues in the case, including 22 the issues that Mr. Miller just discussed. 23 SPECIAL MASTER POPPITI: Why isn't it 24 relevant to the issues that he just discussed?</p> | <p>1 all different sorts of modules that are later assembled 2 by a different company that buys the modules into -- into 3 finished devices. 4 SPECIAL MASTER POPPITI: Who's to say 5 that? How can I be assured that that isn't the case? I 6 mean, it may be, and I will listen to your discussion of 7 overbroad, I haven't seen anything that describes what 8 that means, but how can I be, to the extent that there 9 should be some degree of certainty here, how can I be 10 certain, because that's what you are saying, that no 11 information that is being requested would lead to the 12 discovery of relevant evidence as it relates to prior 13 art/obviousness? 14 MR. CHRISTENSON: Your Honor, I 15 understand your concern, and I -- the only way I can 16 respond to that is to say if you -- what I have done is 17 looked at the -- what documents have been requested, and 18 the documents that they have requested don't -- are not 19 -- are not focused on any of these issues that are being 20 discussed, including the prior art issues, and maybe it 21 would be helpful to look at some of these specific 22 requests, but -- and I am happy to do that if that's -- 23 SPECIAL MASTER POPPITI: I think that's 24 going to be important to do that.</p> |

Hearing

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|---|---|
| <p>1 MR. CHRISTENSON: All right.</p> <p>2 SPECIAL MASTER POPPITI: You know,</p> <p>3 Mr. Miller is saying --</p> <p>4 MR. MILLER: Your Honor, I think we</p> <p>5 start at 82 on these.</p> <p>6 SPECIAL MASTER POPPITI: Just give me a</p> <p>7 second.</p> <p>8 MR. CHRISTENSON: Your Honor, I believe</p> <p>9 that you could turn to Exhibit 4 to LPL's opposition, and</p> <p>10 that should set forth the requests and the responses.</p> <p>11 SPECIAL MASTER POPPITI: It does. And</p> <p>12 which one? 82?</p> <p>13 MR. MILLER: 82, that's where we start.</p> <p>14 SPECIAL MASTER POPPITI: Mr. Miller,</p> <p>15 it's your request, so have at it.</p> <p>16 MR. MILLER: And this seeks information</p> <p>17 that our bills and materials for an LCD module made by</p> <p>18 LPL from the date prior -- one year prior to the priority</p> <p>19 date to understand what these components are and how --</p> <p>20 whether or not they were -- what functions they have.</p> <p>21 You will see there is bill of materials requests for</p> <p>22 different components.</p> <p>23 SPECIAL MASTER POPPITI: I see that.</p> <p>24 MR. MILLER: So that we can ascertain,</p> | <p>1 MR. CHRISTENSON: 82 and 83 are bill of</p> <p>2 material requests.</p> <p>3 SPECIAL MASTER POPPITI: Right.</p> <p>4 MR. CHRISTENSON: May I respond?</p> <p>5 SPECIAL MASTER POPPITI: Yes.</p> <p>6 MR. CHRISTENSON: On No. 82, if we are</p> <p>7 talking prior art, the priority date in this case would</p> <p>8 be October 1998. So, you go -- that's the conception</p> <p>9 date. If you go back the year before that, it's October</p> <p>10 1997. So, they would need to show that something</p> <p>11 happened to invalidate the patent, they would have to</p> <p>12 show something related to that time period of before</p> <p>13 October of 1997, and, yet, the unrestricted time period</p> <p>14 for the request is January 1, 1997, to the present.</p> <p>15 SPECIAL MASTER POPPITI: Mr. Miller.</p> <p>16 MR. MILLER: That's certainly a</p> <p>17 fundamental issue that we have that relates, I think,</p> <p>18 generally to these requests.</p> <p>19 SPECIAL MASTER POPPITI: Well, let's</p> <p>20 talk about the date, then.</p> <p>21 MR. MILLER: We picked January 1 because</p> <p>22 it was a date that was, you know, several months prior to</p> <p>23 the one year prior to the foreign priority date because</p> <p>24 we are trying to ascertain what is the knowledge of one</p> |
| Page 119 | Page 121 |
| <p>1 because the patent merely describes these components as</p> <p>2 part of a first embodiment of the invention, and what we</p> <p>3 need to do is to be able to, very clearly, understand and</p> <p>4 know, to be able to point out to the Court and the jury,</p> <p>5 what's the difference between the structure described in</p> <p>6 the first embodiment of the invention and what is truly</p> <p>7 the prior art? And, so, we felt these bill of materials</p> <p>8 was the least intrusive kind of thing we could ask for</p> <p>9 that would relate to these products as opposed to asking</p> <p>10 for every document that shows every component of the</p> <p>11 module.</p> <p>12 SPECIAL MASTER POPPITI: Well, you are</p> <p>13 certainly not asking for every document that shows every</p> <p>14 component of the module. You are asking for something</p> <p>15 more narrow than that. It's -- you made an effort to</p> <p>16 restrict the request and reduce the universe.</p> <p>17 Mr. Christenson.</p> <p>18 MR. MILLER: Then if you go down to,</p> <p>19 like, No. 84, for example, we ask for documents</p> <p>20 sufficient to identify --</p> <p>21 MR. CHRISTENSON: Are we going to go in</p> <p>22 order, or are some of these now off the table?</p> <p>23 SPECIAL MASTER POPPITI: No, they are</p> <p>24 not off the table.</p> | <p>1 ordinary skilled in the art. And we are happy to agree</p> <p>2 to some reasonable cutoff date. If -- if LPL believes</p> <p>3 that we should have a cutoff date, you know, of the</p> <p>4 patent issuance date, or we can pick some other date that</p> <p>5 would make sense, you know, we are happy to do that. But</p> <p>6 that, of course, has never been proffered.</p> <p>7 SPECIAL MASTER POPPITI: Because</p> <p>8 Mr. Christenson wanted to focus on the date, let's do</p> <p>9 that, and why don't you propose or discuss an appropriate</p> <p>10 date expecting that I am going to -- I am going to order</p> <p>11 the production. Or perhaps by virtue of agreeing on the</p> <p>12 date, you will agree to the production.</p> <p>13 MR. CHRISTENSON: I think that would be</p> <p>14 -- we may be able to resolve some of these issues. I</p> <p>15 don't expect we will resolve all the issues, Your Honor.</p> <p>16 SPECIAL MASTER POPPITI: I understand</p> <p>17 that.</p> <p>18 MR. CHRISTENSON: We can resolve the</p> <p>19 date issue, but I think that would make substantial</p> <p>20 progress.</p> <p>21 SPECIAL MASTER POPPITI: Let's take the</p> <p>22 time to -- do you want to take the time to do that now</p> <p>23 because it makes sense? Mr. Miller?</p> <p>24 MR. MILLER: The patent issuance date</p> |

Hearing

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|---|---|
| <p>1 was December 22, 2002, was it, Cass?</p> <p>2 MR. CHRISTENSON: Yeah. I think that's</p> <p>3 -- I don't think that has any bearing on prior art. For</p> <p>4 art to be prior and to be evidence that would support</p> <p>5 invalidation, we would have to be talking about something</p> <p>6 back in the time period of the critical date. So, again,</p> <p>7 that's going back to October '97.</p> <p>8 MR. MILLER: Well, there is a question</p> <p>9 of the filing date in the U.S. was October of '98, so, I</p> <p>10 mean, I am happy to go to -- I just tried to pick a date</p> <p>11 that would have some significance in the case.</p> <p>12 MR. CHRISTENSON: The end of 1998, is</p> <p>13 that appropriate?</p> <p>14 SPECIAL MASTER POPPITI: What did you</p> <p>15 just say, December of 1998?</p> <p>16 MR. CHRISTENSON: Yes.</p> <p>17 SPECIAL MASTER POPPITI: Mr. Miller?</p> <p>18 MR. MILLER: That's fine, Your Honor.</p> <p>19 SPECIAL MASTER POPPITI: And that would</p> <p>20 be with respect to request for production No. 82 and 83.</p> <p>21 MR. CHRISTENSON: I assume that would</p> <p>22 apply to this set?</p> <p>23 SPECIAL MASTER POPPITI: The entire set,</p> <p>24 yes.</p> | <p>1 you say?</p> <p>2 SPECIAL MASTER POPPITI: Yes. Wasn't</p> <p>3 it?</p> <p>4 MR. CHRISTENSON: Right.</p> <p>5 MR. MILLER: Yes, January 19th.</p> <p>6 SPECIAL MASTER POPPITI: January 19th is</p> <p>7 a Friday.</p> <p>8 MR. CHRISTENSON: We will put that date</p> <p>9 down and respond by that date, and if there is some</p> <p>10 extenuating circumstances, of which I am not aware, I am</p> <p>11 confident we can work that out among counsel. We will</p> <p>12 expect to investigate and produce the documents by</p> <p>13 January 19th, Your Honor.</p> <p>14 MR. MILLER: Cass, let me ask one</p> <p>15 question, if I might, please.</p> <p>16 SPECIAL MASTER POPPITI: Please do.</p> <p>17 MR. MILLER: When was -- LPL is a</p> <p>18 continuation of the business of LG Electronics when it</p> <p>19 did a joint venture with Phillips Electronics. Are we at</p> <p>20 a date and point here where you are going to take the</p> <p>21 position that LPL doesn't have any documents because it</p> <p>22 was LG Electronics' documents if we pick a December 1998</p> <p>23 date?</p> <p>24 MR. CHRISTENSON: I am not picking any</p> |
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| <p>1 Mr. Miller, is that agreeable?</p> <p>2 MR. MILLER: Yes.</p> <p>3 SPECIAL MASTER POPPITI: So, then let me</p> <p>4 re-ask the question: Your having agreed on the date, may</p> <p>5 I have your agreement with respect to the production?</p> <p>6 MR. CHRISTENSON: Your Honor, we will</p> <p>7 agree to produce, in response to No. 82, subject to that</p> <p>8 date limitation.</p> <p>9 SPECIAL MASTER POPPITI: Okay.</p> <p>10 MR. CHRISTENSON: To the extent there is</p> <p>11 documents. I have to check on the availability.</p> <p>12 SPECIAL MASTER POPPITI: Sure. I</p> <p>13 understand that. And would it make sense to do with, and</p> <p>14 I realize we are only on 82, but would it make sense to</p> <p>15 do with LPL what we have done with Viewsonic and focus on</p> <p>16 a date for that production?</p> <p>17 MR. CHRISTENSON: I think that's only</p> <p>18 fair, Your Honor, and I think what we would -- what we</p> <p>19 should try to do is to try to meet the date that</p> <p>20 Viewsonic has selected for its production, supplemental</p> <p>21 productions.</p> <p>22 SPECIAL MASTER POPPITI: That would be</p> <p>23 the 19th?</p> <p>24 MR. CHRISTENSON: Was that the 19th, did</p> | <p>1 date with any intent of avoiding discovery. I don't know</p> <p>2 what the facts are on that, Scott. I just don't know the</p> <p>3 answer to that. But, you know, if the company has</p> <p>4 documents that are responsive, then we have agreed to</p> <p>5 produce those documents.</p> <p>6 MR. MILLER: I guess my only point is</p> <p>7 that if there are documents -- I guess if you don't have</p> <p>8 any documents that relate to products that were sold</p> <p>9 during this time period, and I guess I want to be clear</p> <p>10 that if you took over the business from LG Electronics</p> <p>11 and continued to sell products but those sales took place</p> <p>12 outside the scope of this but they are the same products,</p> <p>13 I would expect those documents, the technical documents</p> <p>14 to be produced with regard to that even if you didn't</p> <p>15 sell them during this time period if the products were</p> <p>16 the same; do you understand that to be -- is that</p> <p>17 consistent with your understanding, Cass?</p> <p>18 MR. CHRISTENSON: My understanding is</p> <p>19 that we are going to respond to your request 82, which is</p> <p>20 bills and materials for the modules, and if LPL has those</p> <p>21 documents, then we will produce those documents.</p> <p>22 MR. MILLER: Your Honor, I guess -- I</p> <p>23 don't want to backtrack, but I am very concerned about a</p> <p>24 December 1998 date as opposed to some date when I know</p> |

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|---|---|
| <p>1 that LPL was in existence and was actually selling</p> <p>2 products and would propose, then, a date in 2000, just to</p> <p>3 be sure that we don't end up getting nothing out of this</p> <p>4 because of some fine point on the question of whether the</p> <p>5 products were sold during the time period.</p> <p>6 If they are substantively the same as</p> <p>7 the products that were sold by your predecessor and that</p> <p>8 business was transferred to you, I would expect to get</p> <p>9 those documents.</p> <p>10 SPECIAL MASTER POPPITI: I certainly</p> <p>11 want the production to encompass the concern that you</p> <p>12 have just raised.</p> <p>13 MR. CHRISTENSON: Your Honor, we have not</p> <p>14 -- I can assure -- we don't have any intention of denying</p> <p>15 the existence of documents under some sort of, you know,</p> <p>16 technical basis that Mr. Miller is raising.</p> <p>17 We have identified the date that's much</p> <p>18 more appropriate than the date that was in the request.</p> <p>19 SPECIAL MASTER POPPITI: Let's do it</p> <p>20 this way: I will -- you are an officer of the Court, I</p> <p>21 will accept you at your word, and if there becomes an</p> <p>22 issue at a later point in time, I will deal with it</p> <p>23 rather than directly and forcefully.</p> <p>24 MR. MILLER: Thank you, Your Honor.</p> | <p>1 documents within LPL's custody, possession, and control,</p> <p>2 and we are going to abide by that.</p> <p>3 SPECIAL MASTER POPPITI: Yes. Okay.</p> <p>4 Next, please.</p> <p>5 MR. MILLER: Next would be No. 83 would</p> <p>6 be the next request, which is the bill of materials for</p> <p>7 LCD modules. And, again, we would, with the history of</p> <p>8 the discussion, we would accept the same date of</p> <p>9 parameters that we have discussed.</p> <p>10 SPECIAL MASTER POPPITI:</p> <p>11 Mr. Christenson.</p> <p>12 MR. CHRISTENSON: Yes, Your Honor.</p> <p>13 SPECIAL MASTER POPPITI: I feel like I</p> <p>14 should be doing "Mutiny on the Bounty" when I refer to</p> <p>15 you, sir, but that would be, that's a great part, but in</p> <p>16 any event, is there agreement with respect to 83?</p> <p>17 MR. CHRISTENSON: With respect to 83,</p> <p>18 they are now asking for bills and materials, I guess, for</p> <p>19 modules made by companies other than LPL, and I am not</p> <p>20 sure I understand what it is they are seeking there.</p> <p>21 MR. MILLER: I think what I am seeking</p> <p>22 is if you have possession, custody, or control over bills</p> <p>23 and materials from your competitor's products or someone</p> <p>24 else's products for the relevant time period, we want --</p> |
| Page 127 | Page 129 |
| <p>1 MR. CHRISTENSON: With that</p> <p>2 understanding, we can -- that is acceptable.</p> <p>3 MR. AMBROZY: Your Honor, a point of</p> <p>4 reference.</p> <p>5 SPECIAL MASTER POPPITI: Yes, please.</p> <p>6 MR. AMBROZY: We had raised a similar</p> <p>7 issue with Viewsonic earlier that Viewsonic has different</p> <p>8 entities but Mr. Miller continued to restrict all his</p> <p>9 document production regarding technical documents just to</p> <p>10 Viewsonic America, and I am just curious how that cuts</p> <p>11 with his request that LPL would request, of all its other</p> <p>12 subsidiaries, that those documents be produced?</p> <p>13 MR. CHRISTENSON: I don't think that's</p> <p>14 what he was saying.</p> <p>15 SPECIAL MASTER POPPITI: Is something</p> <p>16 like that before me at this point?</p> <p>17 MR. MILLER: No, I don't think so, Your</p> <p>18 Honor.</p> <p>19 SPECIAL MASTER POPPITI: Well, then, you</p> <p>20 may want to discuss that on your -- and I say this,</p> <p>21 again, respectfully -- on your own meet and confer.</p> <p>22 MR. AMBROZY: Thank you, Your Honor.</p> <p>23 MR. CHRISTENSON: My understanding is we</p> <p>24 are talking about LPL and its predecessors and any</p> | <p>1 we would like them.</p> <p>2 SPECIAL MASTER POPPITI: And your</p> <p>3 definition of "custody and control" may be more narrow</p> <p>4 than Mr. Christenson's, but we will deal with that at</p> <p>5 some other point. I expect I understand what you are</p> <p>6 asking for.</p> <p>7 Mr. Christenson, do you?</p> <p>8 MR. CHRISTENSON: I think I do. So I</p> <p>9 guess we are just going to make this broadly bills and</p> <p>10 materials for whatever products. So 82 and 83, we will</p> <p>11 take together.</p> <p>12 SPECIAL MASTER POPPITI: Okay.</p> <p>13 MR. MILLER: 84 would be next.</p> <p>14 SPECIAL MASTER POPPITI: Yes, please.</p> <p>15 MR. MILLER: And they are documents</p> <p>16 sufficient to identify the parts of an LCD module and the</p> <p>17 structure, function, source, and/or assemblage of those</p> <p>18 parts, again, from January 1, '97, we would again, with</p> <p>19 date parameters we have discussed, we would be willing to</p> <p>20 accept that same date parameters.</p> <p>21 SPECIAL MASTER POPPITI:</p> <p>22 Mr. Christenson.</p> <p>23 MR. CHRISTENSON: Your Honor, it seems</p> <p>24 to me, if we are already dealing with bills of materials,</p> |

Hearing

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|---|---|
| <p>1 I am not sure what documents would be necessary in 2 response to this where they are talking here about parts 3 of a module. 4 SPECIAL MASTER POPPITI: I mean, you may 5 be suggesting duplication. I don't know whether it does 6 duplicate. Is that what you are suggesting? 7 MR. CHRISTENSON: Well, I am suggesting 8 that, among other things. I also don't see what, you 9 know, what -- what documents would be responsive more 10 generally and I don't see why they would need those 11 documents. 12 Viewsonic is well aware of -- of LPL 13 modules and the parts of LPL modules, but once we have 14 produced the bills and materials, I would think this 15 would be redundant. 16 MR. MILLER: Your Honor, it's not 17 redundant because these are documents that relate to the 18 structure, the function, and how those components are 19 assembled. The bill of material, in my experience, 20 merely just identifies the particular components. 21 Obviously, we are not looking for them 22 to reproduce it. This was a request limited by documents 23 sufficient to identify and not all documents, again, 24 relating to these components.</p> | <p>1 relevant. 2 MR. CHRISTENSON: Your Honor, we 3 disagree. One of the terms for the Court to construe in 4 this case is a flat panel display device and what that 5 means and what it includes. So this goes far, far 6 afield, and just asks us to produce everything -- 7 documents related to every part of the module and every 8 aspect of assembly of every part of the module. 9 SPECIAL MASTER POPPITI: Mr. Miller, is 10 there any way to more tightly focus the request? 11 MR. MILLER: Without seeing the bill of 12 materials, it's a little hard to know. 13 SPECIAL MASTER POPPITI: Maybe that's -- 14 maybe that's the point. 15 MR. MILLER: That's part of the problem. 16 And, you know, Mr. Christenson, all due respect, 17 Viewsonic is not in the LCD module business and really 18 does not focus its energies on LCD modules, so we are 19 trying to take discovery to be able to defend this case 20 and that's what this is directed towards. 21 SPECIAL MASTER POPPITI: Any other 22 comments with respect to 84? 23 MR. CHRISTENSON: No, Your Honor. My 24 only comment, last comment is that Viewsonic may not make</p> |
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| <p>1 SPECIAL MASTER POPPITI: I see that. 2 Yeah. I can understand the expected difference between 3 documents requested in 84 and the ones that we have just 4 talked about. 5 MR. CHRISTENSON: The other issue that's 6 raised here is if we are talking about now assembly of 7 the different parts, again, the modules and the claims -- 8 the claims in this case do not have to do with modules 9 and they don't have to do with assembly of modules, so we 10 are going to get into a lot of, basically, all of the 11 manufacturing records in the company that have to do -- 12 that have nothing to do with the issues in the case 13 because they are going to deal with assembling components 14 and subcomponents used within a module. 15 SPECIAL MASTER POPPITI: Mr. Miller, 16 would you address that, please? 17 MR. MILLER: Sure. I guess the first 18 frame and second frame, which are critical components of 19 the alleged invention of the patents in suit. The 20 patents each are used for assembling the components, and 21 how these components interact and what they do and what 22 was known in the art at the time, again, goes to the 23 issues that we have discussed previously. And, so, I 24 think they are clearly different and they are clearly</p> | <p>1 the LCD modules, but they buy these modules in vast 2 quantities to be used in their products and they know how 3 the products are assembled. The products are assembled 4 for Viewsonic and that's the type of assembly that the 5 package claims really address. They don't address 6 assembly of the modules or the subcomponents in the 7 modules. 8 SPECIAL MASTER POPPITI: Well, I am -- I 9 am going to grant the production of, by agreement, the 10 date will be adjusted to the date that you have selected, 11 and I will issue appropriate findings and recommendations 12 if you tell me that you are not agreeing. 13 MR. CHRISTENSON: I think that would be 14 helpful, Your Honor, just to get your guidance on what it 15 is you think we should be producing. 16 SPECIAL MASTER POPPITI: Thank you. 17 No. 85, please. 18 MR. MILLER: 85 is the -- those 19 components of an LCD module that are or can be used for 20 mounting the module to the external case of a product. 21 Again, this is -- this is a, I guess, a 22 subset 84, to some extent, but it is more focused on the 23 mounting side of it to make sure that we understand what 24 was known, and, again, we would be amenable to the</p> |

Hearing

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| <p>1 discussed date parameters.</p> <p>2 SPECIAL MASTER POPPITI:</p> <p>3 Mr. Christenson, this certainly is more, I will accept</p> <p>4 Mr. Miller's word, more focused than 84. Any objection</p> <p>5 to this with the amended date?</p> <p>6 MR. CHRISTENSON: What I am trying to</p> <p>7 determine is whether -- is 85 subsumed within 84?</p> <p>8 SPECIAL MASTER POPPITI: Is 85 subsumed</p> <p>9 within 84? Well, from my perspective, it looks like it</p> <p>10 could be, but it's Mr. Miller's request. Mr. Miller.</p> <p>11 MR. MILLER: Again, I am not sure that</p> <p>12 it's completely subsumed because I don't know how LPL</p> <p>13 defines the edges of the module and what is part of the</p> <p>14 module components and what is a structure that is used</p> <p>15 for mounting. And, so, you know, my guess would be that</p> <p>16 it is subsumed, but I don't know that for a fact because</p> <p>17 I don't know how, as I said, how LPL defines the edge of</p> <p>18 the module and what is or isn't part of it.</p> <p>19 SPECIAL MASTER POPPITI: You are not</p> <p>20 going to know it until you see it.</p> <p>21 MR. MILLER: That's the problem.</p> <p>22 SPECIAL MASTER POPPITI: I understand.</p> <p>23 I will treat it separately in light of counsel's</p> <p>24 representation.</p> | <p>1 same understanding, and I understand that, that, unless</p> <p>2 you have this information, you are going into -- it makes</p> <p>3 no sense to go into deposition.</p> <p>4 MR. MILLER: Right.</p> <p>5 SPECIAL MASTER POPPITI: So the 29th,</p> <p>6 then.</p> <p>7 This is 86.</p> <p>8 MR. MILLER: Yes.</p> <p>9 SPECIAL MASTER POPPITI: Mr. Miller.</p> <p>10 MR. MILLER: I think 86 is probably</p> <p>11 subsumed within 85 if they are going to produce on 85.</p> <p>12 SPECIAL MASTER POPPITI: Yeah. I am</p> <p>13 flipping, paging back and forth and I am having to blink</p> <p>14 to see the difference.</p> <p>15 Mr. Christenson.</p> <p>16 MR. CHRISTENSON: Yeah. The wording is</p> <p>17 a little bit different.</p> <p>18 SPECIAL MASTER POPPITI: The wording is</p> <p>19 a little bit different.</p> <p>20 MR. CHRISTENSON: I can't articulate the</p> <p>21 difference offhand. I am happy to focus on 85 and treat</p> <p>22 86 as moot if that's agreeable.</p> <p>23 MR. MILLER: That's fine, Your Honor.</p> <p>24 SPECIAL MASTER POPPITI: That's fine.</p> |
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| <p>1 And, again, my question is,</p> <p>2 Mr. Christenson: Do you agree to 85?</p> <p>3 MR. CHRISTENSON: Well, given Your</p> <p>4 Honor's ruling on request 84, we will agree to 85 --</p> <p>5 SPECIAL MASTER POPPITI: Thank you.</p> <p>6 MR. CHRISTENSON: -- with the date</p> <p>7 limitation.</p> <p>8 And, Your Honor, if we are going to be</p> <p>9 providing a more, you know, a more comprehensive set of</p> <p>10 documents for which we need to investigate, I would ask</p> <p>11 that we maybe be given until the other date that</p> <p>12 Viewsonic had mentioned, I think maybe it was the 29th?</p> <p>13 SPECIAL MASTER POPPITI: Yeah, it was</p> <p>14 the 29th.</p> <p>15 MR. CHRISTENSON: And I don't intend to</p> <p>16 wait until the last day. I am happy to do this on a</p> <p>17 rolling basis.</p> <p>18 SPECIAL MASTER POPPITI: I understand.</p> <p>19 Mr. Miller, any problem with the 29th,</p> <p>20 then?</p> <p>21 MR. MILLER: Only that we are -- that it</p> <p>22 really pushes us out in terms of our depositions. You</p> <p>23 know --</p> <p>24 SPECIAL MASTER POPPITI: It would be the</p> | <p>1 Thank you.</p> <p>2 MR. MILLER: And now we are back to 87,</p> <p>3 is a bill of materials for the back light unit, which is</p> <p>4 a -- a particular component described in the patent of</p> <p>5 these modules.</p> <p>6 SPECIAL MASTER POPPITI: And the rest of</p> <p>7 them deal with the back light unit?</p> <p>8 MR. MILLER: Yes.</p> <p>9 SPECIAL MASTER POPPITI:</p> <p>10 Mr. Christenson.</p> <p>11 MR. CHRISTENSON: Well, yeah, 87, I</p> <p>12 believe, and 88 deal with a back light unit. And then I</p> <p>13 believe, Your Honor, that there is a continuing series of</p> <p>14 requests that, essentially, scroll through all manner of</p> <p>15 different subcomponents that are used to assemble LCD</p> <p>16 products. And, you know, we started off more broadly</p> <p>17 with what we discussed, I think, so far, and it seems to</p> <p>18 me that this is just unnecessary for us to go through</p> <p>19 each sub component like this in all manner of records, so</p> <p>20 we object to these requests.</p> <p>21 MR. MILLER: To the extent that these</p> <p>22 are included in 82 or 83, I mean, obviously, they just</p> <p>23 need to refer back and they don't have to produce them</p> <p>24 more than once.</p> |

Hearing

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| <p>1 To the extent they are not, which</p> <p>2 Mr. Christenson's response leads me to think they may not</p> <p>3 be, in his mind, then they, independently, should be</p> <p>4 produced.</p> <p>5 SPECIAL MASTER POPPITI: For the same</p> <p>6 reasons that you articulated earlier?</p> <p>7 MR. MILLER: Absolutely.</p> <p>8 MR. CHRISTENSON: And, Your Honor, I</p> <p>9 cannot say how the bills of materials are formatted or</p> <p>10 what is or is not included in the bill of materials</p> <p>11 related to a module, for example. That may have a line</p> <p>12 item for a back light unit. I don't know if there is a</p> <p>13 separate set of documents and records that would break</p> <p>14 out additional subcomponents for each component; for</p> <p>15 example, a back light unit bill of materials that then</p> <p>16 lists other subcomponents. I just don't know the answer</p> <p>17 to that.</p> <p>18 SPECIAL MASTER POPPITI: If it doesn't,</p> <p>19 you know, you don't have it to give. If it does, you</p> <p>20 have it.</p> <p>21 MR. CHRISTENSON: Right. I don't know</p> <p>22 if it exists and I just dispute the relevance of that</p> <p>23 discovery, Your Honor.</p> <p>24 SPECIAL MASTER POPPITI: Do you want to</p> | <p>1 without exception or after Judge Farnan finally rules.</p> <p>2 Next, please.</p> <p>3 MR. CHRISTENSON: Yes, Your Honor. And</p> <p>4 by the way, some of this may not be -- some of this we</p> <p>5 may be able to work through depending on the formatting</p> <p>6 of the documents and depending on what level of detail</p> <p>7 turns out to be satisfactory.</p> <p>8 SPECIAL MASTER POPPITI: That's fine. I</p> <p>9 would hope that, in light of even the findings and</p> <p>10 recommendations, that you would take the opportunity to</p> <p>11 see if you can't forge some agreements so that we can,</p> <p>12 you know, continue on track without having to sidetrack</p> <p>13 the Court.</p> <p>14 MR. CHRISTENSON: Yes, Your Honor.</p> <p>15 SPECIAL MASTER POPPITI: Next, please.</p> <p>16 MR. MILLER: Your Honor, one, I guess,</p> <p>17 point of housekeeping, looking at my notes, I see that</p> <p>18 the only request to which they actually agreed to produce</p> <p>19 documents were 82, 83, and 85, and I guess, in light of</p> <p>20 that, I am not sure that, you know, I am -- I guess I'd</p> <p>21 re-raise the issue of whether the 29th is an improper</p> <p>22 date or whether they can be -- do it earlier so we can at</p> <p>23 least get those documents, these materials that are going</p> <p>24 to be subject to an order that we are not going to get</p> |
| Page 139 | Page 141 |
| <p>1 make any further record, Mr. Miller, on relevance?</p> <p>2 MR. MILLER: Excuse me?</p> <p>3 SPECIAL MASTER POPPITI: Do you want to</p> <p>4 make any further record on relevance?</p> <p>5 MR. MILLER: No. The only thing I would</p> <p>6 say, just to pinpoint it, is that the patents discuss the</p> <p>7 first frame, which is a critical component, as being a</p> <p>8 component of the back light unit in certain</p> <p>9 circumstances, and, therefore, the back light unit also</p> <p>10 has particular interest in this matter.</p> <p>11 SPECIAL MASTER POPPITI: Okay. I am</p> <p>12 satisfied that the record is similar to my ruling on</p> <p>13 other discussions, and with respect to, then, to 87 and</p> <p>14 those requests that follow relating to the -- the back</p> <p>15 light unit and/or its components, unless you tell me that</p> <p>16 there is agreement, I will issue a finding and</p> <p>17 recommendation with respect to that.</p> <p>18 MR. CHRISTENSON: Yes, Your Honor. I</p> <p>19 think we are in dispute on that, but I understand your</p> <p>20 ruling, obviously.</p> <p>21 SPECIAL MASTER POPPITI: Okay. And it</p> <p>22 will be structured in the fashion that we have talked</p> <p>23 about earlier in terms of providing it within so many</p> <p>24 days after either I issue my findings and recommendations</p> | <p>1 until February, probably.</p> <p>2 I'd at least like to start being able to</p> <p>3 get some of these materials to move this case forward.</p> <p>4 Whether we could go back to the 19th on those, to the</p> <p>5 three they have agreed to --</p> <p>6 SPECIAL MASTER POPPITI: I understand</p> <p>7 what you have just said.</p> <p>8 Mr. Christenson, is there any give on</p> <p>9 the agreement date?</p> <p>10 MR. CHRISTENSON: I'd like to be as</p> <p>11 cooperative as we can, Your Honor. I am just trying to</p> <p>12 avoid being unrealistic. I think that -- I don't have my</p> <p>13 calendar right in front of me. Is the 19th a Friday?</p> <p>14 SPECIAL MASTER POPPITI: The 19th is a</p> <p>15 Friday.</p> <p>16 MR. CHRISTENSON: What if we had until</p> <p>17 that following Monday?</p> <p>18 SPECIAL MASTER POPPITI: The 23rd?</p> <p>19 MR. CHRISTENSON: Right.</p> <p>20 SPECIAL MASTER POPPITI: Mr. Miller. I</p> <p>21 am sorry, the 22nd.</p> <p>22 MR. MILLER: That's fine, Your Honor.</p> <p>23 We can do it then.</p> <p>24 SPECIAL MASTER POPPITI: Then let's do</p> |

Hearing

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| <p>1 the 22nd. Thank you. And that's with respect to each of</p> <p>2 the requests that Mr. Christenson has agreed to.</p> <p>3 Next, please.</p> <p>4 MR. MILLER: Next, I believe, is request</p> <p>5 No. 101, and this deals with the, what the patent in suit</p> <p>6 defines as the reduction of side space. That seeks</p> <p>7 documents referring or relating or evidencing</p> <p>8 communications that mention the reduction of side space</p> <p>9 as expressed in the patent, and there is a citation in</p> <p>10 the patent line and column number.</p> <p>11 And, obviously, this idea is at the</p> <p>12 heart of the supposed invention of these patents in suit</p> <p>13 and obtaining non-privileged communications with regard</p> <p>14 to what it seems to me is directly relevant to be able to</p> <p>15 put the supposed invention into the proper light of how</p> <p>16 it achieves whatever it achieves vis-a-vis the prior art,</p> <p>17 which also sought to address the same issues. The side</p> <p>18 mounting sought to eliminate side space as well.</p> <p>19 SPECIAL MASTER POPPITI:</p> <p>20 Mr. Christenson.</p> <p>21 MR. CHRISTENSON: Yes, Your Honor. This</p> <p>22 is a request that relates to a reference in the ,641</p> <p>23 Patent to a reduction of side space, and we have</p> <p>24 investigated this and we have informed Viewsonic that we</p> | <p>1 that we can investigate their true ownership of these</p> <p>2 patents.</p> <p>3 SPECIAL MASTER POPPITI:</p> <p>4 Mr. Christenson.</p> <p>5 MR. CHRISTENSON: Your Honor, the</p> <p>6 documents that Mr. Miller is referring to, specifically,</p> <p>7 the dec. agreement, which is an agreement between LPL and</p> <p>8 another company, arose in the context of the California</p> <p>9 case, and there was protracted litigation that we don't</p> <p>10 need to get into here related to that agreement. But I</p> <p>11 don't know that there is any allegation, I have never</p> <p>12 seen an allegation, that that agreement has anything to</p> <p>13 do with the technology in this case. And I am not aware</p> <p>14 of any joint venture related to the technology at issue</p> <p>15 in this case, and I am not aware of any defense that's</p> <p>16 ever been alleged related to inventorship or ownership</p> <p>17 with respect to these patents.</p> <p>18 So I think they are trying to import an</p> <p>19 issue from another case into this case that just doesn't</p> <p>20 apply.</p> <p>21 LPL owns these patents, it always has</p> <p>22 owned these patents, and we have -- we have provided the</p> <p>23 invention disclosure forms from LPL's employees.</p> <p>24 SPECIAL MASTER POPPITI: Mr. Miller.</p> |
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| <p>1 don't have any responsive documents.</p> <p>2 SPECIAL MASTER POPPITI: That would do</p> <p>3 it, would it not, Mr. Miller?</p> <p>4 MR. MILLER: That would do it. I was</p> <p>5 not aware of that communication, but -- but that that's</p> <p>6 -- if we got a firm representation to that effect, that</p> <p>7 will do it. I appreciate that.</p> <p>8 SPECIAL MASTER POPPITI: Thank you.</p> <p>9 Next, please.</p> <p>10 MR. MILLER: The next issue are, I</p> <p>11 believe, our requests 102, 103, which deal with</p> <p>12 agreements pursuant to which the methods of mounting flat</p> <p>13 panel display device, other than front mounting, was</p> <p>14 considered, discussed, analyzed, conceived, invented,</p> <p>15 developed, or used. Again, this relates to discovery of</p> <p>16 any joint venture products that, or technologies that may</p> <p>17 have been developed.</p> <p>18 We know that the side mounting was</p> <p>19 developed as a result of a joint technology venture</p> <p>20 between LPL and Digital Equipment Corporation and that</p> <p>21 that ultimately resulted in the Court finding that LPL</p> <p>22 did not have standing to enforce those patents, and we</p> <p>23 are seeking similar kinds of agreements that would relate</p> <p>24 to that technology and/or the rear mounted technology so</p> | <p>1 MR. MILLER: All I can say is that LPL,</p> <p>2 my understanding, I wasn't present in the California</p> <p>3 case, but LPL made the exact same statements there, and</p> <p>4 until these documents were unearthed, you know, they</p> <p>5 contended, as affirmatively as Mr. Christenson does here,</p> <p>6 that they own those patents and probably still contend</p> <p>7 that on appeal.</p> <p>8 So, their joint venture relationship</p> <p>9 with third parties, I haven't seen the dec. agreement, so</p> <p>10 I can't tell you whether or not it relates to mounting</p> <p>11 activities, I don't know what R and D work they did with</p> <p>12 third parties that may well have done this. I understand</p> <p>13 that there were invention disclosure forms for the side</p> <p>14 mount patents that were produced in the California case</p> <p>15 that it turned out to have been after the work was done</p> <p>16 as part of this joint venture agreement.</p> <p>17 So, I am not casting aspersions, but I</p> <p>18 am trying to seek discovery into legitimate issues, and,</p> <p>19 no, we did not seek to assert affirmative defenses and</p> <p>20 claims that we didn't have any justiciable basis to</p> <p>21 assert, but, obviously, if these documents, you know,</p> <p>22 deliver some information, we will be back in front of</p> <p>23 Judge Farnan forthwith seeking to introduce the issuance</p> <p>24 into the case as an appropriate one.</p> |

Hearing

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| <p>1 SPECIAL MASTER POPPITI: Well, let me 2 see if I understand what you just said. 3 Are you suggesting that you have not 4 pled an issue that touches on the issue of validity, 5 which I expect implicates ownership? 6 MR. MILLER: No. We have clearly 7 asserted issues with regard to validity and 8 enforceability of the patent, both of which would be 9 issues -- 10 SPECIAL MASTER POPPITI: Involving 11 ownership. 12 MR. MILLER: -- involving ownership, 13 yes. We have not made -- as Mr. Christenson said, we 14 have not made a specific charge that they don't own these 15 patents at this point, but we clearly have raised issues 16 that raise the specter of whether or not ownership is 17 proper. 18 SPECIAL MASTER POPPITI: Well, it's 19 notice. 20 MR. MILLER: Yes. 21 SPECIAL MASTER POPPITI: 22 Mr. Christenson, with that, is there any agreement with 23 respect to 102 and 103? 24 MR. CHRISTENSON: Well, I guess, if you</p> | <p>1 earlier? In other words, I think Mr. Miller's contention 2 is, perhaps, somewhere out there, is some agreement that 3 prior to the time we invented rear mounting, we were 4 engaged in a joint venture and that joint venture 5 actually developed a rear mounting, which would mean we 6 would be going back to the critical date period as of 7 December, '98, or earlier. 8 SPECIAL MASTER POPPITI: Mr. Miller, do 9 you agree? 10 MR. MILLER: We can -- yes. We can look 11 at that, the date parameter that we discussed earlier. 12 MR. CHRISTENSON: We will agree to 13 respond, given that limitation, Your Honor. 14 SPECIAL MASTER POPPITI: Thank you. And 15 that covers 102. 16 MR. MILLER: Your Honor, if I may be 17 heard a little bit further on that? 18 SPECIAL MASTER POPPITI: Yeah, please. 19 MR. MILLER: It occurs to me that if 20 there was an agreement that was entered into after that 21 date, which affects these mounting patents, I wouldn't 22 want that to be excluded, and, so, I am nervous, you 23 know, being asked to take something on blind faith that 24 that's the proper date range because I just don't know</p> |
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| <p>1 are talking about the specific documents, you referred to 2 the dec. agreement, and then he said that he hasn't seen 3 the dec. agreement, so I don't know if that's the 4 agreement he wants us to produce. We could produce that 5 agreement. 6 SPECIAL MASTER POPPITI: Mr. Miller, is 7 there -- can you better define the universe as you know 8 it? 9 MR. MILLER: The only agreement I know 10 of is what I have read in the news releases about the 11 dec. agreement, but what we are seeking are agreements 12 between LPL and third parties regarding the development 13 of mounting technology as expressly set forth in these 14 requests. 15 SPECIAL MASTER POPPITI: 16 Mr. Christenson, I think that describes what counsel is 17 looking for, so, certainly, it encompasses a dec. 18 agreement and any other agreements. I think you just 19 said that you were not aware of any others, and that may 20 be -- that may be the answer, but certainly it does 21 encompass a dec. agreement. 22 MR. CHRISTENSON: If we are talking 23 about validity and enforceability, I assume we are 24 talking about the same time frame that we were addressing</p> | <p>1 what agreements may have been entered into, you know, 2 after December 1998 that could affect these mounting of 3 technologies. 4 So I guess I am asking to allow the 5 request to run the full breadth of the time because there 6 could well be a post 1998 agreement that implicates the 7 ownership. 8 MR. CHRISTENSON: Your Honor, I think 9 there are two different sorts of issues that are swimming 10 around there. One is the one we have been focusing on, 11 and I think the one that request 102 focuses on, which is 12 who invented the invention. 13 SPECIAL MASTER POPPITI: Right. 14 MR. CHRISTENSON: There is a second 15 issue, I think, that Mr. Miller is alluding to, which is, 16 at some point, there was some transfer of interest in the 17 patent. 18 SPECIAL MASTER POPPITI: Right. 19 MR. CHRISTENSON: And I think the second 20 issue is foreclosed clearly by interrogatory responses 21 where that issue was raised and responded to, and the 22 answer is that there is no transfer of interest. 23 MR. MILLER: With that, then, Your 24 Honor, I am accepting that as the date.</p> |

Hearing

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| <p>1 SPECIAL MASTER POPPITI: Thank you. So</p> <p>2 there is agreement with respect to 102, and I expect that</p> <p>3 also relates to 103, does it not?</p> <p>4 MR. MILLER: From my standpoint, it</p> <p>5 does, Your Honor.</p> <p>6 SPECIAL MASTER POPPITI:</p> <p>7 Mr. Christenson.</p> <p>8 MR. CHRISTENSON: Well, if we are</p> <p>9 talking about documents concerning mounting technology</p> <p>10 developed and invented by LPL between the January 1, '97,</p> <p>11 and the December, '98, we can agree.</p> <p>12 SPECIAL MASTER POPPITI: Mr. Miller.</p> <p>13 MR. MILLER: I don't know why I would be</p> <p>14 limited to documents about an invention by LPL when -- if</p> <p>15 LPL has documents that show it was invented by someone</p> <p>16 else, I shouldn't be -- I should be entitled to those as</p> <p>17 well.</p> <p>18 MR. CHRISTENSON: That's fine, Your</p> <p>19 Honor.</p> <p>20 SPECIAL MASTER POPPITI: Thank you.</p> <p>21 Next, please.</p> <p>22 MR. MILLER: Next would be request No.</p> <p>23 119, which are documents that refer, reflect, or evidence</p> <p>24 use of a flat panel display product of the element which</p> | <p>1 There is nothing that I am aware of. But if there is</p> <p>2 something that Mr. Miller is thinking of, in particular,</p> <p>3 I am happy to address that.</p> <p>4 SPECIAL MASTER POPPITI: Mr. Miller.</p> <p>5 MR. MILLER: Your Honor, we are not</p> <p>6 seeking to see what Mr. Bohannon identified as Exhibit C</p> <p>7 Obviously, that's been produced. What we are asking for</p> <p>8 is the element in the product which he identified as C.</p> <p>9 We are trying to make this as clear as possible so that</p> <p>10 it wouldn't be a misconstruction, and I think we are</p> <p>11 getting an overly narrow reading of this request by</p> <p>12 plaintiff.</p> <p>13 What we are seeking is information</p> <p>14 regarding, in a flat panel display device product, that</p> <p>15 element which they chose to identify as element C in</p> <p>16 those products, not just what Mr. Bohannon happened to</p> <p>17 do, but in their possession, custody, and control</p> <p>18 generally because it clearly relates to the central</p> <p>19 issues of infringement in this case.</p> <p>20 SPECIAL MASTER POPPITI: Based on your</p> <p>21 description, it certainly is broader than what</p> <p>22 Mr. Christenson said that they have already produced.</p> <p>23 MR. CHRISTENSON: Is it related</p> <p>24 specifically to the VX 900?</p> |
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| <p>1 LPL has identified as frame C in pleadings in this Court.</p> <p>2 And what we are interested in is documents that LPL has</p> <p>3 in its possession, custody, or control that show the</p> <p>4 utilization of that structure because that is a critical</p> <p>5 element of what they contend to be the infringing</p> <p>6 structure of the Viewsonic product, and to the extent</p> <p>7 they have information about that structure being used by</p> <p>8 themselves or others, it clearly would be relevant here.</p> <p>9 And, obviously, the dates of that use would be highly</p> <p>10 relevant if it precedes any of the filing dates of the</p> <p>11 patent.</p> <p>12 SPECIAL MASTER POPPITI:</p> <p>13 Mr. Christenson.</p> <p>14 MR. CHRISTENSON: Your Honor, as I</p> <p>15 understand request 119, it's focused on a, what's</p> <p>16 referred to as frame C, a declaration of an expert, and</p> <p>17 that's Mr. Bohannon, LPL's expert, and he is the one that</p> <p>18 made the designation in frame C in an exhibit to a</p> <p>19 declaration, and we have produced to Viewsonic all of the</p> <p>20 documents from Mr. Bohannon related to that issue and</p> <p>21 related to frame C and we have produced all of our patent</p> <p>22 files, as I mentioned earlier.</p> <p>23 So, I don't know if there is anything</p> <p>24 else, at this point, that we would have to produce.</p> | <p>1 MR. MILLER: Cass, it's related to the</p> <p>2 tray, what's been called the tray, and what you call the</p> <p>3 first frame, and the use of that structure in other</p> <p>4 products. I can't be any more clearer than that, and I</p> <p>5 think the request is pretty clear that it's not limited</p> <p>6 to the VX 900 and it's not limited to a component that</p> <p>7 Mr. Bohannon happened to put a little sticky on that said</p> <p>8 "C." It's addressed to the structure of the product and</p> <p>9 the structure that's in the product that you are accusing</p> <p>10 infringement.</p> <p>11 SPECIAL MASTER POPPITI: Well,</p> <p>12 Mr. Christenson, you just asked a question whether it was</p> <p>13 limited to VX 900; right?</p> <p>14 MR. CHRISTENSON: Yeah. The answer, I</p> <p>15 think, is no.</p> <p>16 SPECIAL MASTER POPPITI: Right.</p> <p>17 MR. AMBROZY: Our question, Your Honor,</p> <p>18 is Mr. Miller discusses he is interested in the frame as</p> <p>19 it pertains to infringement, but, again, we are the</p> <p>20 patent holder so why would we be worried about the</p> <p>21 infringement?</p> <p>22 SPECIAL MASTER POPPITI: Mr. Miller.</p> <p>23 MR. MILLER: Your Honor, to the extent</p> <p>24 that they have documents that show this structure as</p> |

Hearing

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| <p>1 being a common element of every LCD product that's sold 2 out there and they have not taken the position that 3 infringes elsewhere, that's evidence that should go 4 before a jury. 5 To the extent that they make this 6 product themselves, that they have identified this 7 component, or others have identified this component as 8 something other than the first frame, which they tried to 9 shoehorn it in this case as being, that would be relevant 10 to the trier of fact as well. 11 It's just a plethora of issues where the 12 structure of the product and the equivalent structure in 13 other components would be relevant to. And this request 14 seeks to get their -- information they have in their 15 possession, custody, or control that relates to the use 16 of a particular component that they have identified as 17 component C in the VX 900 in other flat panel display 18 products. 19 SPECIAL MASTER POPPITI: 20 Mr. Christenson, I certainly understand the request and 21 the strength of it. Any -- 22 MR. CHRISTENSON: Your Honor, Cass 23 Christenson. Given that comment, I think it's now more 24 clear what they are after. And it's disconcerting</p> | <p>1 the point about infringement, Your Honor, whether the 2 frames are important and whether we have asserted 3 infringement against another party that sells similar 4 frames, that's irrelevant. There is multiple defendants, 5 we will get to them as we get to them, but just because 6 someone else or we know of someone else that might be 7 selling a product that has this frame labeled as "C," 8 it's irrelevant to the production. 9 We are willing to produce documents 10 pertaining to the critical date, but anything after that, 11 as it pertains to infringement, is irrelevant for the 12 purposes of Viewsonic's case. 13 MR. MILLER: Your Honor, I would 14 disagree. I mean, Mr. Ambrozy takes upon himself the 15 rights of the jury to decide what is or isn't important 16 in terms of the construction that's being offered here 17 and whether or not there's infringement. 18 SPECIAL MASTER POPPITI: I understand 19 the argument with respect to relevance and what the jury 20 may be entitled to listen to and what they may have to do 21 with it. But I am concerned about -- or I am struck by 22 the claim of privilege, and I understand that the -- that 23 the practice in the case has been not to develop a 24 privilege log, and I am not sure what that means for</p> |
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| <p>1 because it sounds like what they want is any documents 2 that exist related to or analyzing products that may 3 infringe, and there are really two categories of 4 documents. 5 One category are the documents that LPL 6 has that are not privileged, and those documents have 7 already been produced, including documents regarding 8 third-party products. 9 The other category are documents that, 10 you know, relate to any analysis done by outside counsel 11 for LPL, which we would deem privileged and work product. 12 SPECIAL MASTER POPPITI: Well, I 13 understand -- now that you understand the request, and 14 you are responding to the request as you now understand 15 it, I don't have that response in writing for purposes of 16 protecting your record, but if the -- 17 MR. CHRISTENSON: Perhaps one way to 18 clarify this is: Are they talking about the same time 19 period that we were talking about earlier? 20 SPECIAL MASTER POPPITI: Mr. Miller? 21 MR. MILLER: No. 22 SPECIAL MASTER POPPITI: I understood it 23 was longer. 24 MR. AMBROZY: Okay. Then going back to</p> | <p>1 purposes of my dealing with 119 and a claim of privilege 2 with respect to dates up to the current time. 3 MR. MILLER: I don't think that this 4 request was structured to try to get at memos they have 5 written about infringement or not. It was structured to 6 get at, you know, products that they are -- that they -- 7 that use these components and the underlying products. 8 I am not asking them to, through this 9 request, to admit or deny that they infringed. To me, it 10 doesn't seem like it implicates a privilege, if read so 11 broadly, that it would pick up documents that are their 12 analyses, then, you know, that's not something that we 13 are seeking to compel here. 14 SPECIAL MASTER POPPITI: Well, certainly 15 if there are documents that don't implicate the 16 privilege, then unless there is an agreement, I expect 17 that I would rule that these should be produced. 18 If there is a claim of privilege with 19 respect to certain documents, Mr. Miller, are you 20 suggesting that given the practice in this case, that you 21 will -- well, how do you intend that that be dealt with? 22 MR. MILLER: Well, one problem we have 23 in that regard is that, previously, LPL took the position 24 that the mere fact that they had a product was</p> |

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| <p>1 privileged, and Your Honor overruled that.</p> <p>2 SPECIAL MASTER POPPITI: I did.</p> <p>3 MR. MILLER: If we are going to get the</p> <p>4 documents that show, you know, the use of this structure</p> <p>5 in other products, that's what we are looking for. I</p> <p>6 mean, in terms of memos and those sorts of things --</p> <p>7 SPECIAL MASTER POPPITI: You are not</p> <p>8 interested?</p> <p>9 MR. MILLER: I am not interested. In</p> <p>10 the normal case, I'd be inclined to just accept my</p> <p>11 opposing counsel's representation that they have not</p> <p>12 produced, you know, particular memos that were done post</p> <p>13 filing of the litigation that relate to infringement</p> <p>14 analyses so long as I had confidence I was getting the</p> <p>15 underlying materials, whether it be the inspection of the</p> <p>16 product or photographs or whatever or brochures or</p> <p>17 whatever it is they have that relate to those products.</p> <p>18 I, unfortunately, don't have that sense</p> <p>19 of warm and fuzzy in this case, and, so, you know, I</p> <p>20 would look for your guidance in terms of --</p> <p>21 SPECIAL MASTER POPPITI: Well, the</p> <p>22 guidance is easy. I mean, if there is a claim of</p> <p>23 privilege, the burden is on the party that claims</p> <p>24 privilege to, No. 1, assert it, which I think has been</p> | <p>1 the understanding that you will be, consistent with the</p> <p>2 practice in the case, permitted to represent that there</p> <p>3 are privileged documents that you are not going to give</p> <p>4 up.</p> <p>5 Mr. Miller just said he is not</p> <p>6 comfortable with that, but maybe, Mr. Miller, you would</p> <p>7 be more comfortable if you knew that the 119 was not</p> <p>8 going to be contested, I was not going to have to enter a</p> <p>9 finding and recommendation, and you would be getting the</p> <p>10 documents by agreement in due course?</p> <p>11 MR. MILLER: I would agree to accept</p> <p>12 that, you know, with my understanding that the privilege</p> <p>13 is not so broad as to where you overruled it previously</p> <p>14 in terms of the existence of the products or the products</p> <p>15 themselves is privileged, but, obviously, their analyses</p> <p>16 is, I'd be -- I would be willing to accept that by</p> <p>17 agreement.</p> <p>18 MR. CHRISTENSON: Your Honor, I am just</p> <p>19 concerned about the posture in this and all the</p> <p>20 discussion that we had about privilege and how it's</p> <p>21 potentially implicated here. I think our preference</p> <p>22 would be -- we will certainly go back and look at this</p> <p>23 again and see if we can try to work through it now that</p> <p>24 we have a better understanding of what is involved --</p> |
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| <p>1 asserted, not in writing, but certainly on the record,</p> <p>2 and, No. 2, carry the burden forward to prevail on the</p> <p>3 privilege.</p> <p>4 In order to do that, I am going to need,</p> <p>5 to the extent the documents exist, a log of those</p> <p>6 documents. You will be entitled to see the log,</p> <p>7 obviously, and then I will have to take those documents</p> <p>8 and review them in camera.</p> <p>9 I don't see -- I don't see any other way</p> <p>10 that I can come at that.</p> <p>11 MR. MILLER: I don't either, Your Honor.</p> <p>12 SPECIAL MASTER POPPITI:</p> <p>13 Mr. Christenson, any suggestions different from what I</p> <p>14 think I am required to do?</p> <p>15 MR. CHRISTENSON: I think what you have</p> <p>16 said is clear, Your Honor. In the -- up to this point,</p> <p>17 counsel have been relying on each other, you know, to not</p> <p>18 have to log documents created since the inception of the</p> <p>19 case, but it sounds like we are now retreating from that,</p> <p>20 so I assume that's going to apply to everyone.</p> <p>21 SPECIAL MASTER POPPITI: I don't see --</p> <p>22 and I understand what you just said. I don't see any</p> <p>23 other way to handle it other than to ask, now that you</p> <p>24 understand the scope of 119, if you agree to 119, with</p> | <p>1 but, at the same time, I do think we need to preserve our</p> <p>2 objections and our privileges, and maybe this is a good</p> <p>3 time to just briefly discuss the issue of privilege logs.</p> <p>4 It's an issue we have discussed among</p> <p>5 counsel several times, and it sort of fell by the way</p> <p>6 side given all the other activity in the case, and I</p> <p>7 think, to protect everyone's interests, it might be</p> <p>8 helpful to agree that -- and there have been privilege</p> <p>9 logs changed in the case, but they are somewhat stale at</p> <p>10 this point.</p> <p>11 I think everyone should agree on a date</p> <p>12 where we submit new privilege logs addressing the</p> <p>13 documents that are being withheld on a privileged basis</p> <p>14 since before suit was filed, and then, as we understand</p> <p>15 it, we should also address documents specifically</p> <p>16 responsive to the requests that are being -- that we are</p> <p>17 being required to further produce under. And I think</p> <p>18 that would be in everyone's best interest.</p> <p>19 Certainly, it would meet with your</p> <p>20 expectations that you would need a record on which to</p> <p>21 rule to the extent that becomes necessary.</p> <p>22 SPECIAL MASTER POPPITI: Well, if I</p> <p>23 understood you correctly, then let's do -- let me propose</p> <p>24 this without focusing on the date until you suggest a</p> |

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| <p>1 date.</p> <p>2 It seems to me, perhaps, an efficient</p> <p>3 way to deal with 119, and those following requests that</p> <p>4 are similar to 119, it may be that I should forestall</p> <p>5 entering any order with respect to that -- by "order," I</p> <p>6 mean finding and recommendations -- and permit you to</p> <p>7 have brief, a brief opportunity to further discuss it.</p> <p>8 If you can reach agreement with respect</p> <p>9 to 119 and those similar to 119, then I don't need to</p> <p>10 deal with a privilege log in the context of 119 and begin</p> <p>11 that process of you logging them, you exchanging the log,</p> <p>12 and me going into an in camera review as it relates to</p> <p>13 119. That's my first observation.</p> <p>14 The second is: Please make a note that</p> <p>15 we should go back and discuss the issue of privilege logs</p> <p>16 at the end of our business either today, or if we have to</p> <p>17 reconvene briefly tomorrow or in the new week, but my</p> <p>18 thought is rather than cloud what could be done with 119,</p> <p>19 if you can reach agreement and I don't have to deal with</p> <p>20 privilege issues, that may be a wise thing to do.</p> <p>21 Does that make sense or does it not?</p> <p>22 MR. CHRISTENSON: I think it does make</p> <p>23 sense. I think it sort of ultimately comes down to</p> <p>24 Mr. Miller's position because --</p> | <p>1 8th.</p> <p>2 SPECIAL MASTER POPPITI: So, not later</p> <p>3 than the 8th, advise me as to whether or not you have</p> <p>4 reached agreement on 119 and those similar to that.</p> <p>5 MS. MASON: Your Honor, you set January</p> <p>6 8th as the date for us to report to you regarding the</p> <p>7 meet and confer on inspection of the bills of lading.</p> <p>8 SPECIAL MASTER POPPITI: That's perfect,</p> <p>9 then. Then this would be -- thank you for doing that.</p> <p>10 This would be using the same date for purposes of this</p> <p>11 meet and confer on 119 and others similarly situated.</p> <p>12 MR. MILLER: That would be fine, Your</p> <p>13 Honor.</p> <p>14 MR. CHRISTENSON: Just as a point of</p> <p>15 clarification, Scott, are there others that you would</p> <p>16 like us to group under this when we say, "others similar</p> <p>17 to 119"? Just to help us understand if there are any</p> <p>18 others that fall in here?</p> <p>19 MR. MILLER: I don't know of any others</p> <p>20 that are the subject of that yet, but we have a couple of</p> <p>21 upcoming ones that may -- we will have to see.</p> <p>22 SPECIAL MASTER POPPITI: That's why I</p> <p>23 reserved on "others."</p> <p>24 Next.</p> |
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| <p>1 SPECIAL MASTER POPPITI: Well, his</p> <p>2 comfort level, as I understand it.</p> <p>3 MR. CHRISTENSON: Correct.</p> <p>4 SPECIAL MASTER POPPITI: Mr. Miller.</p> <p>5 MR. MILLER: I guess I wouldn't mind a</p> <p>6 forbearance, but I guess I'd like to have, you know, a</p> <p>7 date by which, if there is no resolution of this by</p> <p>8 agreement, that we -- we proceed forward.</p> <p>9 SPECIAL MASTER POPPITI: I agree.</p> <p>10 MR. MILLER: And I'd like that to be a</p> <p>11 fairly short order date, something like the 10th of</p> <p>12 January, at the latest, perhaps.</p> <p>13 SPECIAL MASTER POPPITI: I was even</p> <p>14 thinking of a time sooner than that.</p> <p>15 MR. MILLER: I was, too, originally, but</p> <p>16 I was trying to be kind.</p> <p>17 SPECIAL MASTER POPPITI: No. I don't --</p> <p>18 I don't see why we can't look at a date sometime next</p> <p>19 week when, with respect to 119 and others that are</p> <p>20 similar to 119, you advise me not later than -- didn't we</p> <p>21 pick a date next week for something, or was it the 8th?</p> <p>22 We used the 8th for something. I am going to have to go</p> <p>23 back and look through the transcript.</p> <p>24 MR. CHRISTENSON: We can work off of the</p> | <p>1 MR. MILLER: Next, I think, is the group</p> <p>2 that is from 71 to 74, and these are -- I am sorry.</p> <p>3 (Discussion off the record.)</p> <p>4 SPECIAL MASTER POPPITI: Counsel, are</p> <p>5 you there?</p> <p>6 MR. MILLER: Yes.</p> <p>7 SPECIAL MASTER POPPITI: I was just</p> <p>8 looking at the clock and talking to the court reporter.</p> <p>9 We should take maybe a ten- or 15-minute break, not now,</p> <p>10 but perhaps at 4:30, and hopefully we can get everything</p> <p>11 wrapped up not later than 6:00 unless someone proposes</p> <p>12 that we should cut it off sooner than that and reconvene</p> <p>13 for purposes of dealing with matters that are left to be</p> <p>14 dealt with.</p> <p>15 MR. CHRISTENSON: Your Honor, I am</p> <p>16 cautiously optimistic we can get -- that we can complete</p> <p>17 our work or get very close to completing it.</p> <p>18 SPECIAL MASTER POPPITI: Then let's</p> <p>19 push.</p> <p>20 MR. MILLER: Okay. 71 through 74 are</p> <p>21 documents that relate to the use of products or practices</p> <p>22 of any of the inventions claimed in the patents in suit,</p> <p>23 and this is where I alluded to earlier a sort of catch 22</p> <p>24 that's out there and that LPL contends that they don't</p> |

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| <p>1 make any products which practice these patents, but then</p> <p>2 accuse products that use their modules that are side</p> <p>3 mounted as infringing the patents.</p> <p>4 So I am not sure, given that the patents</p> <p>5 talk about, and certain of the claims within it talk</p> <p>6 about a module that is, quote, capable of being rear</p> <p>7 mounted, I am not sure how we are to understand LPL's</p> <p>8 position when they charge products using their own</p> <p>9 modules of infringing their own patents?</p> <p>10 SPECIAL MASTER POPPITI: I missed</p> <p>11 something there. Say what you just said again, please.</p> <p>12 MR. MILLER: Viewsonic has products that</p> <p>13 it sells that use an LPL module.</p> <p>14 SPECIAL MASTER POPPITI: Right.</p> <p>15 MR. MILLER: That module is, I believe,</p> <p>16 a side mounted module. LPL has advised us that they</p> <p>17 contend that those products potentially infringe the</p> <p>18 patents in suit. Yet, LPL takes the position that they</p> <p>19 don't make any products and none of their products, that</p> <p>20 they have produced no samples of any products that</p> <p>21 utilize or practice any of the inventions disclosed in</p> <p>22 the patents.</p> <p>23 And, so, at one point, they represent we</p> <p>24 were -- we felt that representation, which came only</p> | <p>1 So, we are not accusing Viewsonic of</p> <p>2 infringing simply because they use a sub component of</p> <p>3 something that LPL sells. Viewsonic is accused of an</p> <p>4 infringement because it has a flat panel display device,</p> <p>5 and that is, in turn, connected to a housing, which is a</p> <p>6 much more complex device than just what LPL sells as</p> <p>7 Mr. Miller refers to an LCD module.</p> <p>8 So, that's why there is the conundrum.</p> <p>9 MR. MILLER: The patent claims, certain</p> <p>10 of the patent claims speak of a flat panel display device</p> <p>11 which is, quote, capable of, closed quote, being mounted,</p> <p>12 and I would presume that all of their products are</p> <p>13 capable of being mounted, and if any -- if a side</p> <p>14 mounting module is capable of being mounted through rear</p> <p>15 mounting, which is what they, essentially, contend by</p> <p>16 charging that product with infringement, then there</p> <p>17 should be documents and materials that are the subject</p> <p>18 matter of these requests because they practice the</p> <p>19 invention is claimed by the device.</p> <p>20 MR. AMBROZY: The point of it is, if you</p> <p>21 read the patent limitations, it talks about fastening</p> <p>22 parts on the rear surface of a first frame, and the</p> <p>23 devices that LPL sells does not have that first frame,</p> <p>24 therefore, it doesn't have the fastening parts,</p> |
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| <p>1 after we filed the motion, might be sufficient, but we</p> <p>2 are faced with a conundrum of a situation where they</p> <p>3 accuse products of Viewsonic that use their modules of</p> <p>4 infringing the patents. And, so, we are not sure how to</p> <p>5 square their representation that they don't make products</p> <p>6 that practice the technology of the patents, and, yet,</p> <p>7 accuse products that use their modules of infringement.</p> <p>8 MR. AMBROZY: I think I can cut through</p> <p>9 that.</p> <p>10 SPECIAL MASTER POPPITI: Please.</p> <p>11 MR. AMBROZY: The patents all claim, and</p> <p>12 they claim a flat panel display device and that flat</p> <p>13 panel display device has a flat display panel, which is</p> <p>14 the glass, electronic circuitry, liquid crystal -- for</p> <p>15 lack of a better term, it's the flat glass that everyone</p> <p>16 understands -- and then you have the back light, itself,</p> <p>17 which is attached to that. That is sometimes referred to</p> <p>18 as an LCD module.</p> <p>19 But the patent also has claims -- I am</p> <p>20 sorry, has limitations to frames, so you have the flat</p> <p>21 panel display device, which is the flat display package,</p> <p>22 the back light unit, and then frames. All LPL sells is</p> <p>23 the module, itself, which is the back light unit and the</p> <p>24 display panel.</p> | <p>1 therefore, it's not capable of being mounted.</p> <p>2 SPECIAL MASTER POPPITI: Mr. Miller.</p> <p>3 MR. MILLER: Your Honor, I mean, that's</p> <p>4 an interesting -- you know, we will know a lot more about</p> <p>5 that argument once we get the bills of materials and the</p> <p>6 other materials you have ordered them to produce to us</p> <p>7 because, you know, again, I am somewhat in the dark</p> <p>8 because I don't have any other discovery to know how to</p> <p>9 judge that argument.</p> <p>10 SPECIAL MASTER POPPITI: Well, and, so,</p> <p>11 how does that -- I mean, how does that relate to the</p> <p>12 request of 71?</p> <p>13 MR. MILLER: I guess if they are</p> <p>14 representing on the record that they don't have --</p> <p>15 SPECIAL MASTER POPPITI: That's what</p> <p>16 they are saying.</p> <p>17 MR. MILLER: -- any of these materials,</p> <p>18 then we will have to accept that representation and --</p> <p>19 SPECIAL MASTER POPPITI: You accept</p> <p>20 until you see what other production there is.</p> <p>21 MR. MILLER: Until we see what other</p> <p>22 opportunities there are to address it.</p> <p>23 SPECIAL MASTER POPPITI: Okay.</p> <p>24 MR. MILLER: And we may be able to speed</p> |

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| <p>1 through 72, 73, and 74, I think are --</p> <p>2 SPECIAL MASTER POPPITI: They are all</p> <p>3 the same.</p> <p>4 MR. MILLER: They are all the same</p> <p>5 concept.</p> <p>6 The question is: Are they subject to</p> <p>7 the same representation?</p> <p>8 SPECIAL MASTER POPPITI: Mr. Ambrozy.</p> <p>9 MR. AMBROZY: Your Honor, subject to the</p> <p>10 same representation, and I am definitely going to check</p> <p>11 with our client just to make sure we are all on the same</p> <p>12 page, and I apologize if we have to revisit this issue,</p> <p>13 but my understanding is my representation is accurate.</p> <p>14 SPECIAL MASTER POPPITI: Well, I want</p> <p>15 you to make sure we close circle on that. Let's use the</p> <p>16 same date of January 8, if not sooner.</p> <p>17 MR. AMBROZY: Thank you, Your Honor.</p> <p>18 SPECIAL MASTER POPPITI: Thank you.</p> <p>19 MR. CHRISTENSON: One other point</p> <p>20 related to these requests, and, that is, that, as we</p> <p>21 discussed at the outset, there is a footnote 8 in our</p> <p>22 opposition where we had talked about specific categories.</p> <p>23 SPECIAL MASTER POPPITI: Yes.</p> <p>24 MR. CHRISTENSON: And we are certainly</p> | <p>1 get back to you by that same date.</p> <p>2 SPECIAL MASTER POPPITI: So the</p> <p>3 representation is the same unless there is a difference</p> <p>4 when you get back to me?</p> <p>5 MR. AMBROZY: Yes, Your Honor.</p> <p>6 SPECIAL MASTER POPPITI: Thank you, sir.</p> <p>7 Next, please.</p> <p>8 MR. MILLER: That concludes these -- oh,</p> <p>9 we have one more motion on the discovery questions, and</p> <p>10 that is, request Nos., I think it is 74 and 75, which</p> <p>11 deal with documents provided to a draftsman for the</p> <p>12 drawings that are part of the patents in suit. I got the</p> <p>13 numbers wrong.</p> <p>14 SPECIAL MASTER POPPITI: Let's -- why</p> <p>15 don't we break now. It just makes good sense to break</p> <p>16 now. Let's take ten minutes, please.</p> <p>17 (Recess taken.)</p> <p>18 SPECIAL MASTER POPPITI: Counsel, we are</p> <p>19 back on. I am just moving aside some of the things we</p> <p>20 have dealt with.</p> <p>21 Next, please.</p> <p>22 MR. MILLER: Your Honor, Scott Miller</p> <p>23 back. Excuse me. The next issue --</p> <p>24 SPECIAL MASTER POPPITI: Is it 75 and</p> |
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| <p>1 abiding by our agreement to produce those categories of</p> <p>2 documents, and I just wanted to note that we have looked</p> <p>3 into it and we believe we have produced all the documents</p> <p>4 except for one additional subset that we have discovered,</p> <p>5 and we will be producing those shortly.</p> <p>6 SPECIAL MASTER POPPITI: Mr. Miller, any</p> <p>7 need to follow onto that?</p> <p>8 MR. MILLER: Not, I guess, until I see</p> <p>9 the document.</p> <p>10 SPECIAL MASTER POPPITI: That was just</p> <p>11 informational. Thank you, Mr. Christenson.</p> <p>12 MR. CHRISTENSON: You are welcome.</p> <p>13 SPECIAL MASTER POPPITI: Next, please.</p> <p>14 MR. MILLER: And then 118, I think, is</p> <p>15 the last one, which is similar to 71 through 74, and may</p> <p>16 be able to be dealt with in the same way.</p> <p>17 That deals with the similar kinds of</p> <p>18 things where we are asking for products by model number</p> <p>19 and other designations that would utilize the disclosed</p> <p>20 patents, the technology, but based on -- if the similar</p> <p>21 representation is applicable to this one, then I guess we</p> <p>22 will have to wait and see.</p> <p>23 SPECIAL MASTER POPPITI: Mr. Ambrozy?</p> <p>24 MR. AMBROZY: We will investigate and</p> | <p>1 76?</p> <p>2 MR. MILLER: It's request No. 75 and 76.</p> <p>3 SPECIAL MASTER POPPITI: Yeah. That's</p> <p>4 10/3/06 and the response was 10/18/06. That's No. 4.</p> <p>5 Okay.</p> <p>6 MR. MILLER: This deals with</p> <p>7 communications between each draftsman for the drawings</p> <p>8 and the patents in suit and the instructions that they</p> <p>9 were given and the materials that they were given,</p> <p>10 samples, prototypes, etcetera, and the drawings in this</p> <p>11 case are an interval part of the disclosure and have</p> <p>12 formed the basis of numerous arguments by what they do</p> <p>13 and don't show, and we believe that we are entitled to</p> <p>14 collect from the materials that were provided to the</p> <p>15 draftsman, presumably, from the inventor, that show the</p> <p>16 invention that was to be illustrated.</p> <p>17 SPECIAL MASTER POPPITI: Well, let me</p> <p>18 ask a question that I -- is prompted by the last</p> <p>19 paragraph in Miss Mason's letter of October 3 of 2006. I</p> <p>20 may perhaps state it differently, in the last sentence,</p> <p>21 the request is that, pursuant to 37(c)(1), that LPL be</p> <p>22 barred, I guess framing it differently, does LPL intend</p> <p>23 to present such evidence? Because if --</p> <p>24 MR. CONNOR: This is Cormac Connor for</p> |

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| <p>1 LPL. I am working out of a home phone here.</p> <p>2 SPECIAL MASTER POPPITI: Okay.</p> <p>3 MR. CONNOR: To begin with, as we state</p> <p>4 in our response brief and documents that.</p> <p>5 MR. CHRISTENSON: Your Honor, I think,</p> <p>6 Cormac, did you hear the question? I think the first</p> <p>7 question was to the extent to which there is evidence</p> <p>8 that needs to be addressed?</p> <p>9 MR. CONNOR: And I was about to get into</p> <p>10 that.</p> <p>11 SPECIAL MASTER POPPITI: Do you intend</p> <p>12 to use it?</p> <p>13 MR. CONNOR: Right. Frankly, there is</p> <p>14 no evidence, Your Honor. We have investigated, as we</p> <p>15 described in our response brief, we have spoken with the</p> <p>16 NEIT firm which is based in Korea, spoken with attorneys</p> <p>17 at that firm to determine whether or not they have any</p> <p>18 documents that even might be responsive to these two</p> <p>19 requests. They have confirmed that they do not.</p> <p>20 Over and above our objections to the two</p> <p>21 requests as calling for attorney/client privilege</p> <p>22 information and work product information, there is simply</p> <p>23 nothing responsive that we have found.</p> <p>24 SPECIAL MASTER POPPITI: Well, if there</p> | <p>1 know, in the context of what I have already seen -- and I</p> <p>2 don't want any discussion on it because it's not before</p> <p>3 me -- I don't know whether it's Korean law that applies</p> <p>4 or whether it would be United States law that would</p> <p>5 apply.</p> <p>6 MR. AMBROZY: We will make that clear,</p> <p>7 Your Honor.</p> <p>8 SPECIAL MASTER POPPITI: Thank you.</p> <p>9 Mr. Kirk certainly knows that if we have to go down the</p> <p>10 path of talking about foreign law, it's an interesting</p> <p>11 journey, isn't it, Mr. Kirk?</p> <p>12 MR. KIRK: "Interesting" is not the word</p> <p>13 I would necessarily use, Your Honor.</p> <p>14 SPECIAL MASTER POPPITI: I certainly</p> <p>15 don't speak French. I hope I learned a little bit about</p> <p>16 French law and I definitely don't have any facility for</p> <p>17 Korean. But, in any event, it will be an issue that we</p> <p>18 may have to address.</p> <p>19 That being said, I think we are back to</p> <p>20 LPG.</p> <p>21 MR. CHRISTENSON: Right, Your Honor.</p> <p>22 SPECIAL MASTER POPPITI: The filing is</p> <p>23 to compel Tatung samples of visual display products,</p> <p>24 filed on 10/6, 2006, and the response was 10/23, 2006.</p> |
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| <p>1 is nothing there, the privilege can't cover anything.</p> <p>2 It's a bare bed.</p> <p>3 Mr. Miller.</p> <p>4 MR. CONNOR: That's correct, Your Honor.</p> <p>5 And to the extent there is something that comes up with</p> <p>6 further investigations, which we are comfortable in</p> <p>7 saying that there will not be, based on our discussions</p> <p>8 with NEIT lawyers, you would have them identified on</p> <p>9 privilege logs.</p> <p>10 SPECIAL MASTER POPPITI: Let me ask</p> <p>11 Mr. Miller, to close circle on your comment, or your</p> <p>12 representation that there are no documents, that would</p> <p>13 answer the question, would it not, Mr. Miller?</p> <p>14 MR. MILLER: Yeah. Obviously, I can't</p> <p>15 get something that doesn't exist.</p> <p>16 SPECIAL MASTER POPPITI: Right. If</p> <p>17 something pops up, if you will, and you intend to put it</p> <p>18 on a privilege log, I want to make sure that I have a</p> <p>19 clear understanding as to what privilege it is you will</p> <p>20 be asserting and under what controlling law you will be</p> <p>21 asserting it.</p> <p>22 MR. AMBROZY: We will make that clear,</p> <p>23 Your Honor.</p> <p>24 SPECIAL MASTER POPPITI: Because I don't</p> | <p>1 MR. CHRISTENSON: That's correct, Your</p> <p>2 Honor.</p> <p>3 SPECIAL MASTER POPPITI: For our court</p> <p>4 reporter's benefit, long about 4:30, the air-conditioning</p> <p>5 system changes throughout the building, and I can feel</p> <p>6 it. I apologize for the coughing, counsel.</p> <p>7 MR. AMBROZY: We will try to go as</p> <p>8 quickly as possible, Your Honor.</p> <p>9 SPECIAL MASTER POPPITI: That's okay.</p> <p>10 Just send oxygen.</p> <p>11 Go ahead, please.</p> <p>12 MR. AMBROZY: The overarching, I think,</p> <p>13 thing this Court should be aware of in regard to this</p> <p>14 motion is that, initially, there was a contested by</p> <p>15 Tatung as to whether this motion was properly in front of</p> <p>16 the Court, and I think it's correct that we could bypass</p> <p>17 that and go right to the heart of the motion given that</p> <p>18 Tatung has, since the motion has been filed and issue has</p> <p>19 been raised about whether it was properly brought, Tatung</p> <p>20 has come full circle and has now agreed to produce</p> <p>21 monitors.</p> <p>22 And our point is that --</p> <p>23 SPECIAL MASTER POPPITI: Let's make sure</p> <p>24 that that is the correct understanding.</p> |